

**Investigation of publication of Select Committee on Intelligence report
: Hearings ... ninety-fourth Congress, second session pursuant to H.
Res. 1042 ... July 19-29; Sept. 8-15, 1976.**

United States.

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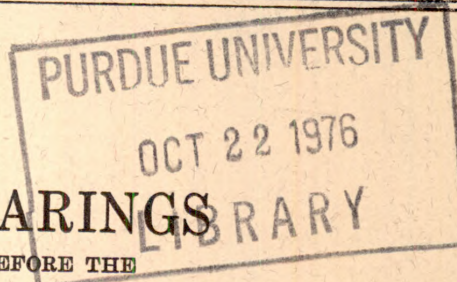
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**INVESTIGATION OF PUBLICATION OF
SELECT COMMITTEE ON INTELLIGENCE REPORT**



HEARINGS

BEFORE THE

COMMITTEE ON

STANDARDS OF OFFICIAL CONDUCT

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

Pursuant to H. Res. 1042

HEARINGS HELD IN WASHINGTON, D.C.

July 19, 20, 21, 22, 26, 27, 28 and 29 ; September 8, 14, and 15, 1976

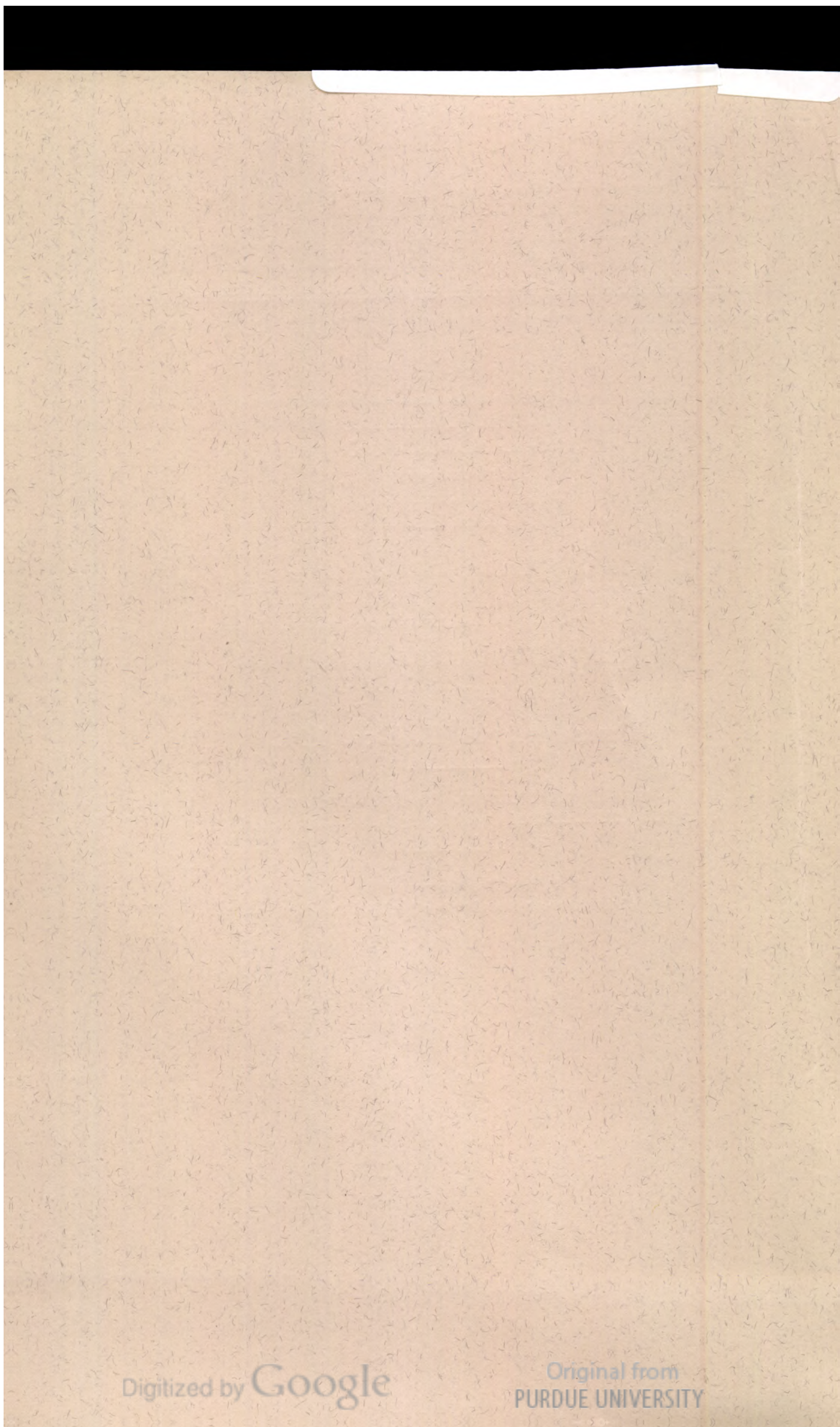
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INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

HEARINGS BEFORE THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT HOUSE OF REPRESENTATIVES NINETY-FOURTH CONGRESS

SECOND SESSION
Pursuant to H. Res. 1042

HEARINGS HELD IN WASHINGTON, D.C.
July 19, 20, 21, 22, 26, 27, 28 and 29 ; September 8, 14, and 15, 1976

Printed for the use of the
Committee on Standards of Official Conduct



U.S. GOVERNMENT PRINTING OFFICE

75-491

WASHINGTON : 1976

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

**UNITED STATES HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS**

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WILLIAM F. ARBOGAST, *Assistant Staff Director*
JOHN T. MARSHALL, *Special Counsel*
HARVEY D. HARKNESS, *Special Counsel*

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INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

MONDAY, JULY 19, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Teague, Hébert, Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John Marshall, special counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, Miss Jan Loughry, committee staff; Robert Carr, associate counsel.

Mr. FLYNT. At this point, the Chair will make an opening statement.

In recent months, the Congress of the United States has sought to take a more active role in the conduct of this Nation's foreign policy and its concomitant intelligence operations. In furtherance of these efforts, the House of Representatives established a Select Committee on Intelligence to conduct an inquiry into the organization, operations, and oversight of the intelligence community of the U.S. Government.

Sections 2 and 6 of House Resolution 591 required the select committee to establish and implement such rules and procedures as it deemed necessary to prevent the unauthorized disclosure, outside the select committee, of "any information relating to the activities of the Central Intelligence Agency or any other department or agency of the Federal Government engaged in intelligence activities, obtained by the select committee during the course of its study and investigation," and to prevent "the disclosure, outside the select committee, of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal Government."

At this point, without objection, the text of House Resolution 591 will be included in the record.

[House Resolution 591 follows:]

[H. Res. 591, 94th Cong., 1st sess.]

[Report No. 94-351]

RESOLUTION

Resolved, That (a) there is hereby established in the House of Representatives a Select Committee on Intelligence to conduct an inquiry into the organization, operations, and oversight of the intelligence community of the United States Government.

(1)

(b) The select committee shall be composed of thirteen Members of the House of Representatives to be appointed by the Speaker. The Speaker shall designate one of the members as chairman.

(c) For the purposes of this resolution the select committee is authorized to sit during sessions of the House and during the present Congress whether or not the House has recessed or adjourned. A majority of the members of the select committee shall constitute a quorum for the transaction of business except that the select committee may designate a lesser number as a quorum for the purpose of taking testimony.

SEC. 2. The select committee is authorized and directed to conduct an inquiry into—

(1) the collection, analysis, use, and cost of intelligence information and allegations of illegal or improper activities of intelligence agencies in the United States and abroad;

(2) the procedures and effectiveness of coordination among and between the various intelligence components of the United States Government;

(3) the nature and extent of executive branch oversight and control of United States intelligence activities;

(4) the need for improved or reorganized oversight by the Congress of United States intelligence activities;

(5) the necessity, nature, and extent of overt and covert intelligence activities by United States intelligence instrumentalities in the United States and abroad;

(6) the procedures for and means of the protection of sensitive intelligence information;

(7) procedures for and means of the protection of rights and privileges of citizens of the United States from illegal or improper intelligence activities; and

(8) such other related matters as the select committee shall deem necessary to carry out the purposes of this resolution:

Provided, That the authority conferred by this section shall not be exercised until the committee shall have adopted the rules, procedures, and regulations required by section 6 of this resolution.

SEC. 3. In carrying out the purposes of this resolution, the select committee is authorized to inquire into the activities of the following:

(1) the National Security Council;

(2) the United States Intelligence Board;

(3) the President's Foreign Intelligence Advisory Board;

(4) the Central Intelligence Agency;

(5) the Defense Intelligence Agency;

(6) the intelligence components of the Departments of the Army, Navy, and Air Force;

(7) the National Security Agency;

(8) the Intelligence and Research Bureau of the Department of State;

(9) the Federal Bureau of Investigation;

(10) the Department of the Treasury and the Department of Justice;

(11) the Energy Research and Development Administration; and

(12) any other instrumentalities of the United States Government engaged in or otherwise responsible for intelligence operations in the United States and abroad.

SEC. 4. The select committee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued over the signature of the chairman of the select committee or any member designated by him, and may be served by any person designated by the chairman or such member. The chairman of the select committee, or any member designated by him, may administer oaths to any witness.

SEC. 5. To enable the select committee to carry out the purposes of this resolution, it is authorized to employ investigators, attorneys, consultants, or organizations thereof, and clerical, stenographic, and other assistance.

SEC. 6. (a) The select committee shall institute and carry out such rules and procedures as it may deem necessary to prevent (1) the disclosure, outside the select committee, of any information relating to the activities of the Central Intelligence Agency or any other department or agency of the Federal Government engaged in intelligence activities, obtained by the select committee during the course of its study and investigation, not authorized by the select committee

to be disclosed; and (2) the disclosure, outside the select committee, of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries or any other department or agency of the Federal Government.

(b) No employee of the select committee or any person engaged by contract or otherwise to perform services for the select committee shall be given access to any classified information by the select committee unless such employee or person has received an appropriate security clearance as determined by the select committee. The type of security clearance to be required in the case of any such employee or person shall, within the determination of the select committee, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(c) As a condition for employment as described in section 5 of this resolution, each person shall agree not to accept any honorarium, royalty, or other payment for a speaking engagement, magazine article, book, or other endeavor connected with the investigation and study undertaken by this committee.

SEC. 7. The expenses of the select committee under this resolution shall not exceed \$750,000 of which amount not to exceed \$100,000 shall be available for the procurement of the services of individual consultants or organizations thereof. Such expenses shall be paid from the contingent fund of the House upon vouchers signed by the chairman of the select committee and approved by the Speaker.

SEC. 8. The select committee is authorized and directed to report to the House with respect to the matters covered by this resolution as soon as practicable but no later than January 31, 1976.

SEC. 9. The authority granted herein shall expire three months after the filing of the report with the House of Representatives.

SEC. 10. The select committee established by H. Res. 138 is abolished immediately upon the adoption of this resolution. Unexpended funds authorized for the use of the select committee under H. Res. 138 and all papers, documents, and other materials generated by the select committee shall be transferred immediately upon the adoption of this resolution to the select committee created by this resolution.

Although certain rules and procedures were established by the Select Committee on Intelligence, we now have reason to believe that there were serious violations and breaches of security during the course of the select committee's investigation.

On January 29, 1976, the House of Representatives adopted House Resolution 982, with an amendment, which without objection will be included in the record at this point.

[House Resolution 982 as adopted, follows:]

House Calendar No. 249

[H. Res. 982, 94th Cong., 2d sess.]

[Report No. 94-796]

RESOLUTION

Resolved, That the Select Committee on Intelligence have until midnight Friday, January 30, 1976, to file its report pursuant to section 8 of H. Res. 591, and that the Select Committee on Intelligence have until midnight, Wednesday, February 11, 1976, to file a supplemental report containing the select committee's recommendations.

Resolved further, That the Select Committee on Intelligence shall not release any report containing materials, information, data, or subjects that presently bear security classification, unless and until such reports are published with appropriate security markings and distributed only to persons authorized to receive such classified information, or until the report has been certified by the President as not containing information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal Government.

House Resolution 982, as amended, resolved that the Select Committee on Intelligence not release any report, prepared by the committee

pursuant to House Resolution 591, containing materials, information, data or subjects that then bore security classification, unless and until such report or reports were published with appropriate security markings and distributed only to persons authorized to receive such classified information; or until the report or reports had been certified by the President as not containing information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the U.S. Government.

House Resolution 982 further authorized the select committee to file its report by midnight Friday, January 30, 1976, and to file a supplemental report containing the select committee's recommendations on or before midnight Wednesday, February 11, 1976.

We now know that portions and/or all of the select committee's report were disclosed to unauthorized persons outside of the select committee and that the select committee's report was published in part, in *The Village Voice*, a New York periodical, in its issues dated February 16 and February 23, 1976.

In response to this apparent violation of House Resolution 982, the House of Representatives, on February 19, 1976, adopted House Resolution 1042, which, without objection, will be included in the record at this point.

[House Resolution 1042 follows:]

[H. Res. 1042, 94th Cong., 2d sess.]

RESOLUTION

Whereas the February 16, 1976, issue of *The Village Voice*, a New York City newspaper, contains the partial text of a report or a preliminary report prepared by the Select Committee on Intelligence of the House, pursuant to H. Res. 591, which relates to the foreign activities of the intelligence agencies of the United States and which contains sensitive classified information; and

Whereas the House, pursuant to H. Res. 982, adopted January 29, 1976, resolved that the Select Committee on Intelligence not release any report prepared by it pursuant to H. Res. 591 until the report is certified by the President as not containing information which would adversely affect the intelligence activities of the CIA in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal Government; and

Whereas it appears that Daniel Schorr, a correspondent for the Columbia Broadcasting System, and a member entitled to admission to the Radio and Television Galleries of Congress, has allegedly admitted publicly that he had obtained a copy of the report referred to above and, as a result of his alleged personal disagreement with the action of the House in adopting H. Res. 982, allegedly took actions which resulted in the publication of portions of this aforementioned report in *The Village Voice*; and

Whereas it therefore appears that the aforementioned alleged actions of the said Daniel Schorr may be in contempt of, or a breach of the privileges of, this House: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to inquire into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and to report back to the House in a timely fashion its findings and recommendations thereon.

House Resolution 1042 authorized and directed the Committee on Standards of Official Conduct to "inquire into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and to report back to the House in a timely fashion its findings and recommendations thereon."

There can be no question about the need to protect certain types of classified information from unauthorized disclosure. Because of the great mobility of modern conventional forces and the instant strike capability of intercontinental weapons, the United States must rely increasingly on military and diplomatic intelligence to provide advance warning about threats to its security. If the House of Representatives is to play an important and vital role in our country's defense, it must continue to have appropriate access to classified information and it must devise appropriate safeguards to prevent unauthorized disclosure of such information.

Unauthorized disclosure of classified information jeopardizes the credibility of the House of Representatives and threatens the very ability of the House to deal with foreign policy, international affairs, and intelligence operations.

Accordingly, the House of Representatives has the authority, indeed the duty, to investigate possible violations of its resolutions and protective orders by those subject to its jurisdiction in order to protect the integrity of the legislative process.

These hearings are being held for the purpose of inquiring into, as fully as possible, the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence and reporting back to the House its findings and recommendations. The congressional power in question concerns the internal processes of Congress moving within its legislative command; it involves the utilization of the Committee on Standards of Official Conduct to secure testimony and evidence needed to enable the House to investigate and exercise legislative functions belonging to the House of Representatives under the United States Constitution.

The specific legislative purposes involved in these hearings are several.

If the House of Representatives is to participate meaningfully in this Nation's foreign policy and oversight of intelligence operations, the House must consider whether new legislation is needed or the Rules of the House should be amended to insure that the House can account for and safeguard the security of classified information which comes into its possession. This requires inquiry into the rules and procedures adopted by the Select Committee on Intelligence for safeguarding classified information and evaluation of the effectiveness of these rules and procedures. The Committee on Standards of Official Conduct, then, seeks to make findings and recommendations concerning the need for more effective security procedures and whether more effective security procedures can be designed to enable the House of Representatives to carry out a larger role in this Nation's foreign policy and the oversight of intelligence operations.

Moreover, the House of Representatives must consider whether new legislation is needed or whether the rules of the House should be amended to define and set out standards and conditions for the handling and filing of House committee reports containing classified information. In these hearings, this committee will seek to develop whether the circumstances surrounding the publication of the text or of any part of the report of the Select Committee on Intelligence demonstrate a present need for such legislation or amendment to rules of the House.

Section 5 of article I of the United States Constitution provides, in part, that "Each House may determine the rules of its proceedings" and "punish its members for disorderly behaviour." This function may appropriately be described as the power of Congress, in particular of the House of Representatives, to discipline its Members, officers and employees. In these hearings, this committee will seek to develop evidence as to whether the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence should result in appropriate findings and recommendations by this committee to the House for discipline of any Members, officers or employees of the House of Representatives.

Section 5 of article I of the United States Constitution further provides, in part, that "(E)ach House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy * * *."

The issue here is whether or not the House presently has the effective power to determine which of its proceedings are to be kept secret, and, upon making that decision, whether the House has the effective power to enforce that decision by constitutional means. In these hearings, this committee will seek to develop evidence as to whether the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence demonstrate a need for the House to enact appropriate legislation on this subject or to amend the rules of the House in appropriate fashion.

In view of the nature of these proceedings and the subject matter under inquiry, it is expected that some evidence and testimony will, of necessity, be required to be received in executive session. Evidence or testimony received in executive session cannot be released or revealed in public session or otherwise without the consent of this committee. These are Rules of the House of Representatives and this committee. The Members, staff and employees of the House are bound by these rules. If this committee learns that these rules are being violated, it will act promptly and unequivocally in dealing with the persons or organizations involved.

Let the hearings now commence.

At this time counsel is recognized.

Mr. MARSHALL. Mr. Chairman, at this time, before calling the first witness, I wish to file for the record the Rules of the Committee on Standards of Official Conduct.

[The rules referred to were retained in the committee files.]

I also wish to file for the record House Resolution 1054 and the investigative procedures for this investigation, which were adopted by this committee on June 24, 1976.

[H.R. 1054 and the investigative procedures referred to follow:]

[H. Res. 1054, 94th Cong., 2d sess.]

House Calendar No. 271

[Report No. 94-865]

RESOLUTION

Resolved, That for the purpose of carrying out H. Res. 1042, the Committee on Standards of Official Conduct is authorized to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. The chairman of the committee, or any member designated by such chairman, may administer oaths to any such witness.

INVESTIGATIVE PROCEDURES

The Committee on Standards of Official Conduct [hereinafter "The Committee"] adopts the following procedures applicable to the inquiry authorized by House Resolution 1042 and House Resolution 1054.

I.—SCOPE OF THESE PROCEDURES

Investigations shall be conducted pursuant to House Resolution 1042, House Resolution 1054, House Rules X, XI; all other applicable House Rules; and the Rules of Procedure of the Committee on Standards of Official Conduct [adopted February 6, 1975, 94th Congress, 1st Session], all of which are hereby referenced and incorporated herein. These Investigative Procedures are adopted subject to the foregoing Rules and shall supplement the foregoing Rules to the extent these Procedures are not inconsistent therewith.

II.—PURPOSE OF THE INVESTIGATION

The purpose of the investigation shall be for The Committee to inquire into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and to report back to the House in a timely fashion its findings and recommendations thereon, in accordance with and as authorized by House Resolution 1042 and House Resolution 1054.

III.—SCOPE OF THE INVESTIGATION

The investigation shall consist of two parts: In the first part, The Committee shall receive evidence at Investigative Hearings or otherwise. In the second part, The Committee shall determine facts and shall report back to the House its findings and recommendations thereon.

IV.—HEARINGS

Investigative Hearings shall be held as a part of the investigation and shall consist of the following:

- (a) The taking and admission in evidence of testimony under oath from witnesses;
- (b) The taking and admission in evidence of books, records, correspondence, memoranda, papers, documents, writings, and other tangible things;
- (c) The admission of such other evidence as shall be pertinent to the purpose of the investigation.

V.—QUORUM

A quorum for taking testimony and receiving evidence shall be two. (House Rule XI, Clause 2(h); Committee Rule 2).

VI.—NOTICE OF HEARINGS

The Committee shall make public announcement of the date, place, and subject matter of Investigative Hearings at least one week before commencement of hearings. If The Committee determines there is good cause to begin the hearings sooner, it shall make the announcement at the earliest possible date. Any announcement made under this Paragraph shall be promptly published in the Daily Digest. [House Rule XI, Clause 2(g) (3)].

VII.—PREPARED STATEMENTS

Each witness who is to appear before The Committee shall, insofar as is practicable, file with The Committee (in advance of his or her appearance) a written statement of the proposed testimony. Such witness will limit his or her oral presentation to a brief summary of the statement. [House Rule XI, Clause 2(g) (4)].

Witnesses are requested to submit any prepared statement to The Committee at least 48 hours in advance of presentation. Prepared statements shall be distributed to all members of The Committee as soon as possible.

If the prepared statement of a witness contains security information bearing a classification of secret or higher, the witness shall so advise The Committee. The statement shall be made available in The Committee Office to all members of The Committee. No such statement shall be removed from The Committee Office.

VIII.—OPENING STATEMENT

At the opening of Investigative Hearings, the Chair shall state the subject and purpose of the investigation, the authority of The Committee to conduct the investigation, and the scope of the evidence to be received. [House Rule XI, Clause 2(k) (1)]. The Committee shall then determine in accordance with Clause 2(k) (5) of Rule XI of the Rules of the House of Representatives whether the remainder of such hearing shall be held in executive session.

IX.—INFORMATION FOR WITNESSES

A copy of The Committee Rules, pertinent Rules of the House, and these Investigative Hearing Procedures shall be made available to each witness [House Rule XI, Clause 2(k) (2); Committee Rule 7].

X.—RIGHT TO COUNSEL

Witnesses at Investigative Hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights [House Rule XI, Clause 2(k) (3)].

XI.—FORM OF OATH

When sworn, witnesses at Investigative Hearings shall subscribe to the following oath:

You do solemnly swear (or affirm) that the testimony you will give before this Committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

XII.—SEQUENCE OF EVIDENCE AT INVESTIGATIVE HEARINGS

Witnesses shall be called to present evidence which is pertinent to the subject and purpose of the investigation. Evidence shall be taken under oath. Each witness shall be given the opportunity to be sworn and then to state or file with The Committee any information he or she may have which is pertinent to the subject and purpose of the investigation. Committee counsel may then question the witness. Each member of The Committee may then question the witness under the five minute rule. The Chair may authorize additional questions or receive other evidence. [See Committee Rule 4].

XIII.—ADMISSIBILITY OF EVIDENCE

Evidence presented shall be subject to the ruling the Chair as to admissibility. The Chair shall rule inadmissible evidence which is not pertinent to the subject and purpose of the investigation or which is immaterial or irrelevant to the subject and purpose of the investigation. The Chair may limit the presentation of repetitious evidence. [See Committee Rule 4].

XIV.—BREACHES OF ORDER AND DECORUM

The Chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the Investigative Hearings; and The Committee may cite the offender to the House for contempt. [House Rule XI, Clause 2(k) (4)].

XV.—EVIDENCE WHICH TENDS TO DEFAME, DEGRADE OR INCRIMINATE

If the Committee determines that evidence or testimony at Investigative Hearings may tend to defame, degrade, or incriminate any person, it shall—

- (A) receive such evidence or testimony in executive session;
- (B) afford such person an opportunity voluntarily to appear as a witness; and
- (C) receive and dispose of requests from such person to subpoena additional witnesses.

[House Rule XI, Clause 2(k) (5)].

XVI.—SUBPOENA OF ADDITIONAL WITNESSES

Subject to Rule XI of the House of Representatives, the Chair shall receive and The Committee shall dispose of requests to subpoena additional witnesses. [House Rule XI, Clause 2(k) (6)].

XVII.—EVIDENCE IN EXECUTIVE SESSION

No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Committee. [House Rule XI, Clause 2(k) (7)].

XVIII.—SWORN STATEMENTS

In the discretion of the Committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Committee is the sole judge of the pertinency of testimony and evidence adduced at Investigative Hearings. [House Rule XI, Clause 2(k) (8); Committee Rule 4(f)].

XIX.—TRANSCRIPT OF TESTIMONY AT INVESTIGATIVE HEARINGS

A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Committee. [House Rule XI, Clause 2(k) (9)].

The witnesses to be called by the committee have already received copies of these documents, and each witness, for the record, will receive a copy of the chairman's opening statement at the time he is called to testify.

I further wish to file for the record a letter authorizing each member of this committee to administer oaths, should that be appropriate, in the chairman's absence.

[The letter follows:]

Pursuant to House Resolution 1054, I hereby designate the following members of this committee to administer the oath to witnesses appearing before this committee at investigative hearings which commence at 10 a.m. on July 19, 1976:

Melvin Price
Olin E. Teague
F. Edward Hébert
Thomas S. Foley
Charles E. Bennett

Floyd D. Spence
James H. Quillen
Edward Hutchinson
Albert H. Quie
Donald J. Mitchell
Thad Cochran

JOHN J. FLYNT, Jr., *Chairman.*

Mr. MARSHALL. At this time, Mr. Chairman, I think it is appropriate to call our first witness.

Mr. FLYNT. Before calling the first witness, the Chair will inquire if any member on my right or any member on my left desires to make a statement prior to the swearing of the first witness.

**TESTIMONY OF DAVID W. BOWERS, CHIEF SPECIAL INVESTIGATOR,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT, ACCOMPANIED BY JOHN W. MARSHALL, DEPUTY CHIEF SPECIAL INVESTIGATOR**

Mr. Bowers, will you rise.

You do solemnly swear that the testimony that you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BOWERS. I do.

Mr. FLYNT. You may be seated.

Mr. Bowers, before you begin, will you identify Mr. Marshall, who is seated on your left.

Mr. BOWERS. Mr. Chairman, this is Mr. John W. Marshall, who is my deputy on the investigative staff.

Mr. FLYNT. Will you also, at this time, very briefly identify yourself.

Mr. BOWERS. I am retired after 25 years of investigating experience with the FBI.

Mr. FLYNT. First of all, you are David W. Bowers.

Mr. BOWERS. Yes; I am David W. Bowers. I am retired after 25 years with the FBI.

Mr. FLYNT. And you have been designated as the chief investigator by this committee for the purposes of this investigation.

Mr. BOWERS. Yes, sir, commencing on March 1, 1976.

Mr. FLYNT. Mr. Bowers, you may proceed.

Mr. BOWERS. Thank you, Mr. Chairman.

Mr. Chairman, I have a far more detailed written report which contains specific information not disclosed here. This includes various items of evidence such as copies of the Village Voice and other articles resulting from the leaks. We also have tapes of some of the various news reports about the select committee report.

The committee may wish to receive this in executive session, since the committee may find information contained in it is covered under House Rule XI 2(k) (5), regarding testimony which tends to defame, degrade, or incriminate.

Thank you, Mr. Chairman.

[Mr. Bowers written report, referred to above, appears at the end of his oral testimony.]

Mr. FLYNT. Mr. Bowers, does that complete your prepared public session testimony?

Mr. BOWERS. Yes, sir.

Mr. FLYNT. The Chair will ask the counsel for the committee, Mr. John Marshall, if he has any questions which he desires to ask Mr. Bowers at this time.

Mr. JOHN MARSHALL. Mr. Chairman, I have no questions at this time.

Mr. FLYNT. The Chair will now ask that same question of the members of the committee?

Mr. PRICE?

Mr. PRICE. I have no questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No.

Mr. FLYNT. Mr. Teague?

Mr. TEAGUE. Well, Mr. Bowers, it would appear from the report that certainly your staff has done a good job.

Mr. BOWERS. Thank you, sir.

Mr. TEAGUE. Do you think we are any nearer to the answer to the questions than we were when we started?

Mr. BOWERS. Yes, sir, quite a bit.

Mr. TEAGUE. With all of the changes in the draft report and the report, does it boil down to where you have a very definite idea as to which report was leaked or which report Mr. Schorr used? Can you eliminate a whole bunch of the reports?

Mr. BOWERS. Yes, sir, we can eliminate quite a number of them, particularly the great bulk, or all of the ones that existed within the executive branch, the copy that was obtained January 19.

Mr. TEAGUE. Thank you, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Teague.

Mr. Quillen?

Mr. QUILLEN. Thank you, Mr. Chairman.

Do you place any significance on the fact that a number of the media refused to be interviewed, while others, the Village Voice and others, responded gratefully, so to speak?

Mr. BOWERS. Mr. Quillen, I will leave it to the committee to draw that conclusion as to whether there is any significance in their refusal to respond.

Mr. QUILLEN. We all know freedom of the press is important, and the protection of the sources are important, but when it comes down to the security of our Nation, I think that is most important, and after all, the goal of this committee is trying to find out whether the leak occurred, and I, too, want to congratulate you on the fine job that you have done in pursuing this matter, first of all, within the framework of the House of Representatives and the committee involved in the hearings, the Select Committee on Intelligence.

Mr. BOWERS. Thank you, sir.

Mr. FLYNT. Mr. Hébert?

Mr. HÉBERT. Thank you, Mr. Chairman, and I want to associate myself with Mr. Teague on what he has observed, and comment on the final answer. As I understand, you eliminated the executive department from the leak.

Mr. BOWERS. Mr. Hébert, what I meant there was we could eliminate copies of the report which were obtained on January 19. Now, we have not found any copy of the report anywhere that exactly matches the Village Voice version.

Mr. HÉBERT. Well, our direction from the House directs us to find the leak to Schorr. All other media leaks are not in that resolution. This is one individual. Now, do you consider in this very exhaustive investigation you have made that you are closer to finding out who leaked to Mr. Schorr?

Mr. BOWERS. Yes; I think we are quite a bit closer.

Mr. HÉBERT. Do you think that leak came from the executive department?

Mr. BOWERS. I would prefer not to answer that question in open session, if I might, Mr. Hébert.

Mr. HÉBERT. By the same token, you would rather not answer that question if I asked you did it come from the legislative branch then?

Mr. BOWERS. I think we best, it would be my considered judgment we best leave the answer to those questions——

Mr. HÉBERT. I know what your answer is going to be, I just want it on the record.

Mr. BOWERS. I will leave that to the committee whether that should be put on the public record.

Mr. HÉBERT. I did want to point out the fact the one individual we are directed by the resolution of the House to ascertain the source of the leak from is Mr. Schorr.

Mr. FLYNT. If the gentleman will yield.

Mr. HÉBERT. Yes, certainly.

Mr. FLYNT. The Chair would like to read the resolving clause of the resolution, since the Chair is of the opinion it may not coincide with what the gentleman from Louisiana just stated. The resolving clause reads as follows:

MR. HÉBERT. Not just Mr. Schorr?

Mr. HÉBERT. I can accept that.

Mr. HÉBERT. But the general information, I recognize the Chairman's judicial attitude toward the hearing, but all that I was trying to say is that we are really in the business of finding out where this leak came from and by whom it was leaked. And I think I have to be very fair, if that is part of my makeup, being fair, that I certainly would not ask any newspaper reporter to reveal his source, and I want that to be on the record right quick. I can't wear two hats because my background would prevent me from asking that question, and I am not going to change colors.

Mr. HÉBERT. Yes.

Mr. FLYNT. If the gentleman from Louisiana will yield to me?

Mr. FLYNT. The Chair would state that each of such Members has stated his willingness to voluntarily appear before the committee at which time he will give any such testimony he so desires.

Mr. HÉBERT. Well, in that area, I would have to take cover under what the witness has said, it has not been revealed publicly, but there was not unanimity on the part of some Members to appear without a subpoena.

Mr. TEAGUE. Mr. Chairman, each Member was offered to do what he wanted, either appear voluntarily or if the committee decided, be subpoenaed.

Mr. HÉBERT. Of course, Mr. Chairman, I can't press that because I would have to reveal what I have read in confidence to the committee, and I can't do that.

Mr. FLYNT. At this point the Chair would like to say that it is the opinion of the Chair that the committee is concerned with all leaks which came out of the Select Committee on Intelligence, and not with only one. But with all leaks.

Mr. HÉBERT. Oh well, Mr. Chairman, I agree with you, and I hadn't intended to mention this, but I am even more concerned with the leak that came out of this committee within the last week. And here we have had a big investigation going on, and the final leak and all of this going on here, that within a few minutes this committee leaked. It is the most abominable thing I ever heard in my life.

Mr. TEAGUE. What was the leak?

Mr. HÉBERT. The reporter couldn't have sat in the last meeting of this committee, the last time it met, and made a better report than he did make if he sat in here; it is the most accurate report of a committee meeting I ever heard from the legislative branch in my life.

Mr. FLYNT. The gentleman from Michigan?

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. The gentleman from Washington?

Mr. FOLEY. No questions.

Mr. FLYNT. The gentleman from New York?

Mr. MITCHELL. Thank you, Mr. Chairman. The report leaves all sorts of unanswered questions and I assume we are going to get the answers in executive session.

Mr. FLYNT. If the committee so votes after the hearing.

Mr. MITCHELL. I am a little confused by the response to Mr. Hébert's question about whether or not there was a leak from the executive branch. It seems from the report you concluded there was not, and yet when answering Mr. Hébert's question it sounds as though there perhaps could be a leak.

Mr. BOWERS. Mr. Mitchell, we have not reached any conclusion. We have tried to report to the committee the facts as we know them, and let the committee make that judgment. This is my complete written report, which contains, as you can see, considerably more information than I have summarized here today. And we just prefer not to make conclusions and leave that to the committee to do based on the facts we have collected.

Mr. MITCHELL. I will defer my questions, Mr. Chairman.

Mr. FLYNT. The gentleman from Florida?

Mr. BENNETT. The only observation I would like to make is about the leak from the committee about something that happened a week or so ago. I don't think the audience here should infer from what was printed that all of the things that were printed were accurate, because they obviously were not. There were some stories that I read that were highly inaccurate. There were some things in these stories which had some accuracy. But there were some things in those stories which were very inaccurate.

I didn't want the press to think that this committee was inferentially saying that everything that has been printed about that other matter has been accurately stated in the press, because obviously it has not. That is all.

Mr. FLYNT. The gentleman from Mississippi, Mr. Cochran?

Mr. COCHRAN. Thank you, Mr. Chairman. I wanted to ask one question with respect to the review that you make about the procedures being used by the select committee for safeguarding and protecting classified information that came into its possession. Based on your 25 years with the FBI and apparent knowledge of dealing with classified information, what would you have suggested as a set of procedures,

very briefly, to prevent unauthorized leaks or disclosures of legitimately classified information by members of the staff or the select committee?

Mr. BOWERS. Mr. Cochran, the manner in which the—well, let me say this: The lack of any systematic identification or control on the report, as it was delivered and turned loose from the staff, made it impossible to establish any accountability then or now.

Mr. COCHRAN. Would these procedures have included a marking or identification of each draft made of the committee report or just the final draft approved by the committee?

Mr. BOWERS. It is pretty standard procedure within intelligence agencies in dealing with classified documents to have each document, and generally each package, identified and charged out to the people to whom they are furnished, with very complete records being kept on who has what and where it is.

Mr. COCHRAN. Assuming that the best possible procedures were established by the staff director or the chairman of the committee for safeguarding classified information, would these have actually prevented the leaks to the New York Times or to Reuter's or to the Washington Star or to Daniel Schorr or to apparently others, as your testimony suggested occurred?

Mr. BOWERS. That is a difficult question to answer, because you are dealing with the integrity of people who have access to the information or to the documents. I doubt if there is any system that can be devised that will control completely the desire of someone to leak information.

Mr. COCHRAN. The only other question I have is apparently on page 37 of your testimony, in reference to what the CIA did with its copies. It is stated in the first sentence of the last paragraph on that page 37: "CIA has destroyed all extra copies returned to it. It still retains 25 copies, 2 of which have some portions missing due to their destruction during review."

Are these extra copies that you refer to copies that were made by other Federal agencies and returned to CIA?

Mr. BOWERS. That is right, sir.

Mr. COCHRAN. And was CIA the initial source of all of the other executive branch agency copies?

Mr. BOWERS. CIA with agreement with the committee was the go-between with the executive branch and the committee for review of the report and for correlating all executive branch observations and getting them back to the committee. So the CIA was the source of all copies of the draft report which we found anywhere in the executive branch, with the one exception of the copy which had been given to Mr. Packman on the night of January 22 at the meeting with the committee staff.

Mr. COCHRAN. Is that January 22 copy the copy that was distributed to the other Federal agencies or was it the copy that one member of the select committee gave to the other fellow, not Packman, but the director?

Mr. FLYNT. Before the answer, would the gentleman from Mississippi yield? Does the gentleman mean January 22?

Mr. COCHRAN. I was repeating the date stated by the witness.

Mr. BOWERS. I meant to say January 22, if I misstated.

Mr. COCHRAN. If I misstated it, I meant January 22. I thank the Chair. Is the January 22 document that was delivered to Packman the source of all of the Federal agency documents?

Mr. BOWERS. No, sir, that particular copy was not copied. According to Mr. Packman, it was locked in the safe and stayed there, it was never copied. We found no copies of it anywhere else.

Mr. COCHRAN. On the other hand, it was the document that was given to CIA by a member of the committee that was copied by CIA and distributed throughout the executive branch.

Mr. BOWERS. That is correct.

Mr. COCHRAN. And that delivery was without the approval of the chairman of the committee or committee as a whole; is that correct?

Mr. BOWERS. That is correct.

Mr. COCHRAN. Those are the only questions I have, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Cochran, Mr. Teague?

Mr. TEAGUE. Mr. Bowers, one other question. So many things come to me from different sources, about half of them I don't know what is classified and what isn't classified. Are you convinced that the staff people on Capitol Hill that you talked to and the members knew they were dealing with classified material?

Mr. BOWERS. The staff of this select committee you are talking about?

Mr. TEAGUE. Correct.

Mr. BOWERS. Mr. Teague, I will answer that question by referring back to what one of the members of the staff told us who was responsible for a short time for security of the staff and left in 1975.

He said that while the staff was briefed on security matters and so forth, that he never really felt that they had a really good appreciation and understanding, some of them, of what they were dealing with.

Mr. TEAGUE. That is all, Mr. Chairman.

Mr. FLYNT. In connection with that, the Chair would like to state that it is his recollection that during the testimony of Mr. Bowers, that after personnel, staff personnel, were cleared by the CIA at the request of the chairman of the select committee, that in turn the staff members, some committee staff members so approved were briefed by the CIA.

Mr. BOWERS. Yes, sir.

Mr. FLYNT. And that it was fully explained to them what the various classifications meant, and which items and how to identify them, documents and papers and other information which bears a classification for secret and above.

Mr. BOWERS. I am sure that was true. We have been advised that each member of the staff as he was cleared was also given appropriate briefing by CIA.

Mr. FLYNT. Does your investigation report the fact that all members of the committee staff signed the agreement, item 5 of which reads as follows:

I further agree that until such time as the Committee has made its final report to the House I will not divulge to any unauthorized person in any way, form, shape or manner the work product or memoranda of the Committee or any material or testimony received or obtained pursuant to House Resolution 591 94th Congress, until specifically authorized by the Committee.

Mr. BOWERS. It is our understanding that every member of the staff did sign such an agreement.

Mr. FLYNT. That is your best information?

Mr. BOWERS. That is right, sir. This was one of the specific requirements established by the select committee, that all members of the staff would sign such an agreement, and it is our understanding that they did.

Mr. FLYNT. Are there other questions from committee members at this time?

Mr. Mitchell?

Mr. MITCHELL. How many classified documents did this committee handle over the period of its investigation?

Mr. BOWERS. Mr. Mitchell, it has been estimated——

Mr. FLYNT. Would the gentleman yield before the answer? When you say "this committee," you mean the Committee on Standards of Official Conduct or do you mean the House Select Committee on Intelligence?

Mr. MITCHELL. The House Select Committee on Intelligence; the one we are discussing right now.

Mr. BOWERS. It is an estimation, but the estimate has been put at approximately 74,000. We have seen one estimate ranging as high as 77,000.

Mr. MITCHELL. 77,000 classified documents? And there is some doubt that perhaps the staff members didn't realize these were classified documents?

Mr. BOWERS. No, I am certain that every document that bore a classification was very clearly and very appropriately marked. Now, Mr. Marshall has just informed me not all of those 74,000 documents were actually classified. I am certain that all of the documents which bore a classification were properly and clearly marked. Whether that marking continued when copies were made is problematical.

Mr. MITCHELL. How would you characterize the security measures followed by this committee as with those generally followed by committees in similar situations?

Mr. BOWERS. I have no measure of comparison, Mr. Mitchell.

Mr. MITCHELL. How would you compare it with classified matters that would be handled by an intelligence agency, by the FBI?

Mr. BOWERS. I would say by comparison it was very poor.

Mr. MITCHELL. Thank you, Mr. Bowers.

Mr. FLYNT. If there are no further questions.

Mr. QUILLEN. Mr. Chairman?

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. There was no question about this document containing classified or secret information. I am talking about the report of the Select Committee on Intelligence. Was there any doubt in your investigation that it did not contain any classified or secret information?

Mr. BOWERS. Members of the committee advised us that it did. CIA subsequently put a classification on it after they had reviewed it, because they said it did contain classifiable information.

Mr. QUILLEN. I wanted to clarify that, if there was any doubt, because in testimony before the Rules Committee, the chairman of the select committee said that it did contain certain classified and secret information, and in the debate on the floor of the House when I handled the resolution I had in my pocket a motion that the House go in secret session, and I had in my possession at that time infor-

mation which would clearly prove that the document did contain secret information.

Mr. BOWERS. It is my understanding that all copies of it which exist within the executive branch carry a classification of, I believe secret, and perhaps even top secret.

Mr. QUILLEN. I don't think there is any question when these copies were being leaked that that was not known.

Now, one further question: How much did the Reporters Committee on Freedom of the Press receive from the Village Voice? Was that ascertained in your investigation?

Mr. BOWERS. Mr. Felker said he made no contribution or paid anything whatsoever to anyone. It is my understanding at some point in time the Reporters Committee said they received none and, in fact, they stated they would not accept any, I believe in the February 24 statement that they issued.

Mr. QUILLEN. I thought that should be clarified.

Thank you, Mr. Chairman.

Mr. FLYNT. Thank you.

Mr. Bennett?

Mr. BENNETT. Mr. Bowers, I realize you are a director of investigation, and therefore, perhaps not the person who we would expect primarily to rely upon, but I was impressed by what Mr. Cochran raised here. You know the great value of this hearing is ultimately going to be, in my opinion, trying to strengthen the procedures to make realistic and practical the ways in which secret materials are to be handled before committees of Congress, and that is really very important. And although I realize you are not primarily legislating or even advising us on legislation, I would hope before you conclude your activity with the committee that you might submit to the committee suggestions of places where you think things might be strengthened, not only in the procedures of handling matters before a committee, but also in the basic rules and legislation with regard to it.

If you could do that I think the committee would be greatly served.

Mr. BOWERS. We will be glad to, Mr. Bennett.

Mr. FLYNT. Thank you, Mr. Bennett.

[The following report, previously mentioned, was received for the record:]

STATEMENT OF DAVID W. BOWERS, CHIEF SPECIAL INVESTIGATOR, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

Mr. Chairman, members of the committee, House Resolution 1042, directing this committee to "inquire into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and to report back to the House in a timely fashion its findings and recommendations thereon" was adopted on February 19, 1976. This followed a series of events which began 1 month earlier on January 19, 1976.

Briefly, these events were as follows:

On January 19, 1976, the staff of the Select Committee on Intelligence made 20 copies of its draft of the report on the committee's investigation of U.S. intelligence operations. Sometime after noon on that date the staff began to distribute the report with 1 copy going to each of the 13 members of the committee and 1 to CIA.

Within hours, information in the draft had been leaked to the news media. Fairly detailed accounts of portions of the report appeared in print the next morning and were broadcast that evening.

Throughout the week the select committee met to consider the draft and changes proposed in it by members and by executive branch agencies. Numerous

meetings were held between committee members, committee staff personnel, and representatives of various executive agencies, some lasting several hours, in an effort to resolve disagreements over material in the draft. Changes in the text were made each day beginning on January 20, 1976.

On January 23, 1976, the Select Committee on Intelligence voted 9 to 4 to approve the report. The staff was to complete approved changes and provide them to the members of the committee as soon as possible. Some members received their updated copies of the report late on January 23, 1976. Others got theirs on Saturday, January 24, and some did not receive their copy of the changed pages until Monday, January 26.

The CIA was refused a copy of the approved draft on Friday, January 23. The next morning, however, a member of the committee, without committee authority, loaned his copy of the report to CIA from which it made 30 copies. CIA on that date, January 24, 1976, sent copies to the White House, the Department of State, the Department of Defense, the Federal Bureau of Investigation, and the Office of Management and Budget.

Daniel Schorr, CBS News correspondent, has stated that on January 25, 1976, "I have the Pike report!" He broadcast excerpts from the report that evening on CBS News and continued with additional broadcasts of information from it for several days. On January 26 and again on January 28, 1976, he displayed portions of the report on television.

On January 29, 1976, the House adopted House Resolution 982 which directed that the Select Committee on Intelligence shall not release any report containing classified information unless it is appropriately marked and its distribution restricted or until the President has certified it would not adversely affect intelligence activities in foreign countries. All copies of the report, except one, were secured.

The one exception was the copy in Daniel Schorr's possession. He concluded in his own words, the report "will die—if I let it die."

He began to search for a publisher. The Reporters Committee for Freedom of the Press put him in touch with an attorney who secured an agreement from Clay Felker, Editor-in-Chief of *The Village Voice*, a New York City weekly, to publish the report. Mr. Schorr turned a copy of the report over to Mr. Felker on February 6, 1976.

The *Village Voice* issue of February 16, 1976, appeared on news stands on February 11, announcing on page one its "Exclusive," a 24-page supplement, which it titled in large red letters, "The Report on the CIA That President Ford Doesn't Want You To Read."

The supplement contained the text of the second section of the report entitled "The Select Committee's Investigative Record." An introduction by Aaron Latham noted some footnotes were "trimmed for space reasons." The following week, under date of February 23, 1976, *The Village Voice* published the first section of the report, "The Select Committee's Oversight Experience."

On February 19, 1976, the House adopted by a vote of 269 to 119 House Resolution 1042 calling for this investigation.

Mr. Chairman, I joined this committee staff on March 1, 1976, and my Deputy, Mr. John W. Marshall, came on the following day. Within a week we had an investigative staff ready to work, but it was not until March 29, 1976, that the House approved House Resolution 1060 providing funds for the investigation.

This committee agreed the investigation initially would concentrate on the members and staff of the Select Committee on Intelligence and the executive branch agencies which had access to the select committee report, before determining if it would be necessary to initiate contacts with news media personnel. At the outset, the decision was made not to seek interviews with representatives of the media unless absolutely essential to complete the assigned task, and then only to the extent necessary to clear up questions which could not be answered by other means.

Interviews with Members began on April 1, 1976. Since that time we have conducted more than 420 interviews and reinterviews involving over 385 people. These interviews were conducted with some 105 Members and employees of the House and over 240 officials and employees of the executive branch, including the White House. After finding it was necessary to seek interviews with news media personnel, contacts were made with some 25 of them or their attorneys. Most of these were attempted interviews because most media people declined to answer questions.

All of these interviews have been voluntary. No persons interviewed were required to take an oath. The presence of counsel during the interviews was always allowed. Transcripts were made of the interviews whenever requested. Each person interviewed was furnished a copy of the transcript if requested.

While we made no effort to uncover leaks prior to the existence of the select committee draft report, a number were reported to us.

One of the earliest leaks occurred back on June 6, 1975, when the news media reported that the Select Committee on Intelligence had met in secret session that day to consider the internal problems involving the conflict between Members and then Chairman Nedzi.

There followed leaks alleging CIA infiltration of the White House; leaks about the Cyprus crisis; leaks regarding technical reconnaissance; leaks about alleged U.S. involvement in Iraq; and leaks concerning several alleged CIA covert operations.

Perhaps it is significant to note that Daniel Schorr was the recipient of some of these early leaks. In fact, on November 4, 1975, Chairman Pike, in a public session of the Select Committee on Intelligence, referred to Mr. Schorr's broadcast on November 1, 1975, concerning the committee's activities, and asked if he wanted to reveal his source. Mr. Schorr replied, "No thank you."

On December 31, 1975, New Year's Eve, members of the select committee staff invited several newsmen to the committee office. These included Laurence Stern of the Washington Post, James Adams of Associated Press, and Daniel Schorr. These reporters were given a thorough briefing concerning the committee's investigation of the FBI's purchase of electronic devices from the U.S. Recording Co. The reporters were allowed to review for themselves the transcript of an interview the committee staff had conducted with a witness.

The significance of this action is its relationship to the employee agreement which all employees of the select committee were required to sign. Item 5 of this agreement states:

"I further agree that until such time as the committee has made its final report to the House I will not divulge to any unauthorized person in any way, form, shape, or manner the work product or memoranda of the committee or any material or testimony received or obtained pursuant to House Resolution 591, 94th Congress, unless specifically authorized by the committee."

Congress was not in session on New Year's Eve, 1975, and the Select Committee on Intelligence was not meeting during the holiday season. One top staff person involved in this matter said he believes it was cleared "back through the chairman." Another said he is unsure if Chairman Pike was consulted; he did not believe the chairman was in his office at the time.

One person reported Chairman Pike was in the committee office during part of the time the reporters were present. Mr. Pike has stated he thinks he was in Florida at that time.

None claimed the release of this information to the press was approved by the committee as required in the employee agreement.

The agreement provides, incidentally, that "failure to abide by any of the foregoing will subject me to immediate termination of my employment with the committee."

We know of no action being taken concerning this matter.

Preparation of the draft report began late in 1975 and continued until the early morning of January 19, 1976, the day the 94th Congress returned for its second session. This was the staff's deadline for having the draft ready.

During the drafting of the report, some staff members worked in their homes, some using classified material in this regard. One staff member reported the pace was so hectic in completing the report that she did not take a day off between Christmas 1975, and February 14, 1976. She did not leave the office from Saturday, January 18, until Tuesday, January 21, 1976.

On or about January 16, 1976, top staff personnel met with Chairman Pike in his office. It was decided a copy of the draft would be provided to each member of the committee. The draft would be delivered with a short cover letter signed by Staff Director A. Searle Field. This reminded the Members "that release of this draft report to unauthorized persons constitutes a violation of committee rules."

Neither the draft nor the cover letter gave any indication that the draft contained classified information. Top staff personnel had told Chairman Pike the draft, in their estimation, contained no information which would damage national security.

Inclusion of classified information in the draft set off prompt objections. Congressman McClory declared the inclusion of classified information in the draft was in violation of the agreement which had been reached between the committee and the executive branch regarding the handling of classified material. Chairman Pike has contended he never agreed, nor did the committee intend to agree, to let the executive branch write the report. He said adherence to the agreement with respect to the report would mean the President would be writing the committee's report.

The agreement referred to was adopted by the committee on October 1, 1975, by a vote of 9 to 3. It provided that classified information would be furnished to the committee by executive agencies but the information would not be disclosed publicly without an opportunity for consultation and that where a disagreement occurred the matter would be referred to the President.

Twenty copies of the draft report were made on the Xerox machine in the committee office. The more than 340 pages were divided about equally and placed in the two black spring-clip folders labeled volume I and volume II.

Distribution of the report to the members of the committee and to the executive Branch through CIA began around noon on Monday, January 19, 1976. In the words of one staff person involved, "There was a rush. It was extremely disorganized."

It was so disorganized that those in charge could not recall who made the deliveries to which offices or the time they were made.

There was no specific control system. Copies of the draft contained no identification whatever. They were not numbered, nor were they charged out so they could be accounted for.

The staff had intended to deliver the copies directly to the members of the committee, but this was not done in several instances. Some members found their copy on their desk when they returned to their office late in the day. One member said his report was left on his desk and remained there overnight. Another member was out of town and his staff returned the draft to the committee when they recognized what it was.

The committee staff had six copies of the draft left with which it could work. These frequently were taken during committee meetings by members who did not bring their copy with them. At no time did the staff obtain receipts for copies given to members or to executive branch representatives. They relied on memory when anyone took an extra copy. At times the staff had to call various offices in an effort to locate missing copies.

One staff member closely involved with the handling of the report commented that by Wednesday, January 21, "We lost control . . . as soon as they started discussing the report."

A problem with the report developed even before delivery to the 13 committee members was completed. Someone on the staff noticed the copies did not contain the latest change on page 73. This page had been retyped to include footnote 119 setting out a memorandum concerning Senator Henry Jackson which came from CIA files. Inclusion of this material necessitated having a new page 73 and a page 73A.

To rectify the oversight staff members had to retrieve copies already delivered to members of the committee and substitute the new pages for the old one.

Mitchell Rogovin, Special Counsel to the Director of CIA, was given a copy of the draft report by Staff Director Field about 4 p.m. on January 19, 1976. Mr. Rogovin had gone to the committee office to pick up the document. The copy he received did not have the new page 73 and 73A in it, nor was this material ever furnished to him.

It had been agreed CIA would coordinate the review of the draft throughout the executive branch and would advise the committee on January 21, 1976, of executive branch views.

Mr. Rogovin was requested not to distribute copies of the report outside CIA until the following day since all members of the committee had not yet received their copy. Mr. Rogovin returned to CIA headquarters about 5 p.m. on January 19, 1976, and had 30 copies of the draft made. He retained the original which he turned over to investigators of this committee on May 11, 1976.

The first of the copies was ready about 6:30 p.m. on January 19. Four of these were disseminated early that evening. Three stayed within CIA and one was sent to William Hyland, Deputy Assistant to the President for National Security.

arye 23, 1976. Some obtained the copies on Saturday, and some did not receive the changes until the following week.

Mr. Rogovin contacted Staff Director Field during the afternoon of January 23, 1976, and requested a copy of the approved draft. His request was refused. This refusal was made with the authority of Chairman Pike on the basis the report had been adopted, it belonged to the committee and the executive branch was not entitled to an advance copy.

Mr. Rogovin contacted several members of the committee on the morning of January 24, 1976, and obtained a copy of the draft from one of the members.

Contents of the draft report had been leaked to the news media on January 19, 1976, within hours after its distribution was begun to members of the committee. By 4 or 5 p.m. that day, a New York Times reporter had called Staff Director Field and a CIA press assistant making inquiries apparently based on information in the report.

The following morning the New York Times published an article by John Crewdson which contains direct quotes from the draft report and considerable detail about some of the information contained in the draft. This article states portions of the report had been obtained by the New York Times.

The Washington Star on January 20, 1976, also published an article setting out details from the draft report. This article attributes information to "a source familiar with the report" and "a committee source."

The CBS Evening News on January 20 broadcast a segment by Daniel Schorr in which he identified a number of items discussed in the committee report.

Weeks later Mr. Schorr wrote an article in diary style which appeared in Rolling Stone on April 8, 1976. Under the date of January 20, Mr. Schorr mentions information he had learned from the report and concludes, "Why does nobody seem upset so much of this report is leaking?"

Some people were upset. Chairman Pike at a meeting of the select committee on the morning of January 20, 1976, expressed concern over the number of leaks and indicated the sooner the committee finished its business the less this would be a problem.

Mr. Pike commended the committee staff for its work on the report and said to the best of his knowledge no substantive leaks resulted from their efforts until the draft was submitted to the members of the committee. He added the executive branch also had received the report since they gave the CIA a copy.

Daily newspaper articles and news broadcasts concerning contents of the report and the actions taken by the select committee meeting in executive sessions to consider the report, continued throughout the week. These articles and broadcasts used terminology such as "committee source" and "one source present at today's meeting."

The New York Times on January 24, 1976, contained an article reporting the select committee report had listed Reuters, a British news agency, as one of the news agencies which had been manipulated by CIA. The article quotes the managing director of Reuters as stating he had no evidence that CIA had tampered with, or otherwise manipulated, any of Reuters' dispatches.

Mr. Schorr continued to report on committee activities while seeking a copy of the report. On January 20, 1976, he went to the select committee office and asked for a copy. One staff member recalled he said something to the effect, "What am I, an orphan? It looks like everybody has this report." She told him he would have to try someplace else.

Mr. Schorr's continued search for a copy of the draft report paid off on or about Sunday, January 25, 1976.

He obtained, and apparently Xeroxed, a copy of the draft report which had been updated with the inclusion of the changes made by the committee staff on Friday, January 23.

We have determined that on January 24-25, 1976, the Select Committee on Intelligence, members and staff, apparently possessed 18 copies of this report plus the original pages.

Five members of the committee are known to have had their copies at their homes during the weekend of January 24-25, four apparently in Washington, and one in his home district. Four members stated their copies were locked in their offices during that weekend, and four members reportedly left their copies with the committee staff.

Two members of the committee staff are known to have had copies in their possession at their residence during that weekend. One staff assistant to a member of the committee had a copy at his residence and the staff assistant to another member had a copy in his possession on Saturday, January 24, while transporting it from the office to the member's residence.

One member of the committee staff reportedly had two copies of the report at his residence during this weekend. This individual has denied having a second copy at his home.

Our investigation revealed 40 copies of this latest draft of the report existed in the executive branch on that weekend. Twenty-three of these were at CIA, seven at the White House, two at the Department of State, four at the Department of Defense, three at the Department of Justice, and one at the Office of Management and Budget. Six officials or employees in the Department of Justice, including the FBI, are known to have had custody of a copy of this draft outside of official work space at various times during the weekend.

Mr. Schorr has publicly disclosed he decided to highlight a "long footnote" concerning a CIA memorandum recording how Senator Jackson gave advice to the Agency in his first broadcast on the evening of January 25.

The Jackson memo is the item which caused difficulty with respect to the initial distribution of the draft report on January 19, 1976. Reportedly, Staff Director Field had wanted to use this memo as the lead item in the draft report. Other committee staff members counseled against highlighting the memo in such fashion; thus, it was relegated to footnote 119 and added on page 73 of the draft.

The Jackson memo, incidentally, was obtained by the committee staff from CIA files. One of the committee staff members copied the memo in longhand while at CIA Headquarters. CIA officials have stated they have no record this memorandum was furnished to the committee staff. CIA representatives were unaware the committee possessed the information until they saw it in the copy of the report they obtained from a committee member on January 24, 1976.

The New York Times on Monday morning, January 26, also selected the Jackson memo as the lead for its article regarding the select committee's "final report." The article, datelined Washington January 25, reported portions of the report "were made available to the New York Times today."

Mr. Schorr continued periodic broadcasts of information from the committee report for several days, even displaying small portions of it before the television cameras on January 26 and 28, 1976.

The House voted on January 29 not to release the report. Thirteen days later, on February 11, 1976, in its issue dated February 16, 1976, the Village Voice appeared on newsstands with a 24-page supplement containing virtually the entire text of the second section of the committee report entitled "The Select Committee's Investigative Report." An introduction to this material written by Aaron Latham mentions no source of the report.

The following day, February 12, the Washington Post published an article by William Claiborne and Laurence Stern, naming Daniel Schorr as the source of the report published by the Village Voice. The article states the Reporters Committee for Freedom of the Press had agreed to "passively" accept any cash proceeds from the publication.

The article quotes Mr. Schorr as denying involvement and stating, "I have no knowledge of how the Village Voice acquired its copy. I had no connection with it and I do not mean by that to state that I have a copy."

The executive committee of the Reporters Committee for Freedom of the Press, in a statement dated February 24, 1976, denied having possession of, or access to, the committee report. The statement revealed Mr. Schorr had proposed he donate any proceeds from the publication of the committee report to the reporters committee, which agreed to accept such funds.

The statement reports arrangements for publication were made without knowledge or approval of any member of the Reporters Committee. It says the Reporters Committee assisted Mr. Schorr by putting him in touch with a lawyer so he could make his own arrangements. The statement concluded the Reporters Committee had decided to decline any gift offered in connection with the publication of the select committee report.

The April, 1976, issue of the Washington Monthly contains an article which reports both Daniel Schorr of CBS and John Crewdson of the New York Times got access to the select committee's report over the weekend of January 23-24. Mr. Schorr, according to the article, made a Xerox of the report before returning it.

The article continues that Mr. Schorr turned "to his colleague, Fred Graham . . . a member of the Reporters Committee" after CBS executive decided against publishing the report. Mr. Schorr wanted the report published as

a paperback with proceeds to go to the Reporters Committee, and Mr. Graham told him the "trustees had unanimously approved the arrangement." The article continues that Mr. Graham gave Mr. Schorr the name of a New York lawyer, Peter Tufo, who subsequently arranged for publication of the report in the Village Voice.

An article in the June, 1976, issue of Esquire magazine reported Mr. Schorr had attempted through CBS news president, Richard Salant, to have the report published by a CBS subsidiary. This article states he sent Mr. Salant an Xerox copy of the report. The article continues that Mr. Schorr later contacted the Reporters Committee which put him in touch with its lawyer, Peter Tufo, who made the deal with Clay Felker, editor-in-chief of the Village Voice, for the publication of the report.

The Esquire article alleges Mr. Schorr, in denying being the Village Voice's source, suggested "someone must have stolen it from under me." The article reports that Mr. Schorr, in a conversation with Sandy Socolow, CBS Washington bureau chief, and another CBS employee, allegedly implied that Leslie Stahl, a CBS reporter and friend of Aaron Latham, had furnished the report to Village Voice.

Mr. Chairman, we have been unable to verify the information reported in the Washington Monthly and Esquire since most of the principals involved have declined to be interviewed.

Several allegations were received that the New York Times and Newsweek magazine also had obtained copies of the select committee report. The Times, through the use of such statements as "a copy of which was obtained by the New York Times," and "a copy of the committee's final report made available to the Times," encouraged this impression.

Our investigation revealed that Times reporter John Crewdson apparently had access to a copy of the report but made notes from it rather than xeroxing it. Mr. Crewdson was reported to be contacting staff members of the select committee as of January 29, 1976, attempting to get a copy of the report. He reportedly admitted to one person contacted that he did not have the entire report.

One source alleged that Newsweek reporter Anthony Marro was furnished a copy of the report. Marro denied this allegation, volunteering that had he had the report he would have printed it in its entirety in Newsweek.

As previously stated, we began conducting interviews on April 1, 1976, with the first contacts being with members of the select committee. We sought from them knowledge on how the committee handled the draft report, the identity of their staff assistants who had access to the report, their copies of the report, and any information they might have regarding the source of leaks. Each member was reinterviewed at least once later in the investigation to expand on information developed from other sources.

Chairman Otis Pike advised there had been absolutely no provisions to make advance copies of the draft report available to the press. He declined to allow access to either his copy of the draft report or the original pages of the report which are in his possession. He furnished the police log showing persons who signed in and out of the committee office from January 19 to March 11, 1976, when the practice was discontinued. He declined to provide three logbooks covering earlier periods, although he did orally furnish some information from one of them.

Asked if he considered the supplying of a copy of the report to CIA on January 24, 1976, a leak. Mr. Pike replied, "Yes, I would consider that a leak." He said he thinks a committee member gave it to CIA, but that does not mean a member arranged for its publication.

Mr. Pike stated he had some evidence, suspicions and conjectures on the sources of leaks, but no "hard evidence." He declined to furnish the evidence or to reveal his suspicions and conjectures. He did recite a set of facts which he described as "interesting" from which others could infer that a staff assistant to one member of the committee in concert with the Department of State may have been involved in leaking the report to Daniel Schorr.

Congressman Robert McClory furnished his copy of the draft report in which he had attempted to maintain both the old and new pages as changes occurred. He also furnished investigators some loose pages which he had not placed into his copy, as well as other documents. Mr. McClory identified one staff assistant who had worked very closely with him with respect to the select committee operations.

Congressman Philip Hayes declined to allow access to his copy of the report. Congressman Morgan Murphy also declined to allow access to his copy of the report. Congressman William Lehman stated he had returned his copy of the draft to the committee staff.

Congressman Robert Kasten furnished his copy of the draft to investigators for review.

Congress Dale Milford furnished his copy to investigators for review. He identified one assistant who worked with him on the report.

Congressman James Johnson allowed review of his copy of the draft report in his office. He stated three reporters, Jim Adams of Associated Press, a reporter from the New York Times and another reporter from the New York Daily News, each had asked him for a copy of the report. He said he refused each of them. He said he asked the Times reporter facetiously, "Why not go back to your original source," and the reporter replied the source had dried up. This occurred, he said, after the Village Voice had published the report.

Congressman James Stanton turned over his copy of the report for review. He identified two staff assistants having worked with it.

Congressman David Treen allowed review of his copy of the report in his office. He was particularly critical of the committee staff for the lack of a system to keep track of material. He related the staff had requested from him a copy of the cover letter used to transmit the draft report to committee members since the staff had "misplaced" its copy and needed one for file.

Congressman Ronald Dellums stated he had turned his copy of the report back to the staff. He identified one staff assistant as having worked closely with him on Select Committee matters. He said he and his staff had been "beseiged" by reporters seeking copies of the report throughout the week beginning January 19, 1976.

Congressman Robert Giaino furnished his copy of the report to Chairman Flynt of this committee for review.

Congressman Les Aspin turned over his copy of the report for review. He identified one member of his staff who had worked with the report.

All staff assistants to the 13 members of the Select Committee identified as having had possession of, or possible access to, the report were interviewed. These totaled 34 interviews.

The initial interviews with the members of the committee resulted in one admitting that he had made his copy of the report available to CIA on Saturday, January 24, 1976. He related Mr. Rogovin had called him early that morning and advised that Staff Director Field had refused to give him a copy. This member agreed to loan his copy to CIA to be reproduced. He said his copy was picked up by a CIA courier around 10 a.m. and returned to him about 4 p.m.

The initial interviews with staff assistants to the members also produced an admission of a leak of three pages of the draft report to the news media. This individual stated he had gratuitously copied three pages in the report which he gave to Ranjit DeSilva, a reporter for Reuters News Agency. He said he took this action because he felt the information in the report alleging CIA used Reuters to circulate "agency-composed 'news' articles" was incorrect.

This individual is an assistant to the member who loaned his copy of the report to CIA.

The interviews with the members and staff assistants produced considerable information and allegations regarding possible sources of leaks of the draft report, but no admissions other than the ones mentioned earlier.

The second major phase of the investigation focused on interviews with the Select Committee staff personnel. Forty-three individuals were identified as having served on the committee staff. It was determined one of these had not actually joined the staff and another was affiliated with it for only 3 days. A third individual who was employed for only 4 weeks in August 1975, stated she had no information regarding the report. A fourth person whose employment terminated in August 1975, declined to be interviewed.

Personal interviews were conducted with the other 39 individuals employed on the Select Committee staff. Some of them were interviewed more than once.

Committee Staff Director Searle Field made a strong defense of the staff with respect to leaks. He said he felt the staff was "watertight." He said they handled some 74,000 classified documents and there never was any leak of the information until it came to the committee and the executive branch in a hearing.

Mr. Field said the staff worked for 5 or 6 weeks on the draft report and there was not even any speculation in the news media during that time about the contents. Then, he said, the draft was distributed to the members of the committee and to CIA, starting around noon on January 19, 1976. By 4 p.m. on that date the New York Times was calling. He said they pretty much had the contents of some of the more dramatic sections of the report.

Mr. Field said the distribution of the draft was in accordance with instructions "very explicitly from the chairman."

Mr. Field and other staff members insisted the executive branch had in its possession all of the changes made in the draft report up to the committee meeting on Friday, January 23. These changes, they contended, were made available to CIA and State Department representatives at a meeting between them and some staff members which began on the night of January 22, and concluded during the early morning hours of January 23.

Committee staff members declared that in addition to new pages containing the changes made up to the time the meeting concluded, the executive branch representatives took with them at least one, and possibly two, up-to-date copies of the draft report which they obtained from the staff.

Mr. Field declared it would have been a simple matter for the executive agencies to determine what changes were made during the committee meeting on January 23, since they were simple and very few. This information, coupled with what they had received during the meeting with the staff, would have provided the text of the report as it was adopted by the committee on January 23.

The staff had no receipts or other records to support their claim that the executive branch representatives had been supplied additional copies of the report or copies of changed pages. They relied solely on their recollection, and the statements of the various staff members present during the meeting vary.

The interviews with the 39 members of the select committee staff produced a number of allegations and leads concerning the possible identity of sources of leaks, but no admissions of guilt in this regard.

The investigation next turned to the executive branch. Here we attempted to locate and account for every copy made of the draft report and to identify and interview every person who had a copy in his possession.

Mr. Rogovin advised he was furnished a copy of the initial draft of the report about 4 p.m. on January 19, 1976, by Mr. Field in the committee office. He said he returned to CIA headquarters about 5 p.m. These times are supported by the log maintained by the chauffeur driving Mr. Rogovin that date, and by the police log maintained at the select committee office. This log shows Mr. Rogovin signed into the committee office at 1545 (3:45 p.m.) and out 5 minutes later.

Our investigation disclosed a total of 88 copies of the initial draft report were circulated within executive branch agencies. Forty-three of these were found still in existence. Two of these were turned over to the investigative staff by Mr. Rogovin, one being the original copy he received from Mr. Field.

Seymour Bolten, Director of the CIA Review Staff which was created specifically to deal with both the House and Senate Select Committees on Intelligence, advised that he and another member of the staff, together with Martin Packman, Deputy Director for Research, Bureau of Intelligence and Research, Department of State, were the principal executive branch participants in the lengthy meeting with the select committee staff which began on the evening of January 22.

Mr. Bolten stated he had with him the original draft received by Mr. Rogovin from Staff Director Field on January 19. He said since the draft had not been updated, it became very difficult to follow the discussion; hence, the staff loaned him and the other CIA representative a current copy.

Both Mr. Bolten and the other CIA representative asserted they did not keep this borrowed copy of the draft, leaving it behind when they left the meeting. They also declared that they were not furnished any new pages containing changes made in the draft report.

Mr. Packman stated he arrived at the meeting without a copy of the draft and sometime during the session he was furnished a copy by the committee staff. At the conclusion of the meeting he asked if he might retain the copy since he had made notes in the margin which he needed to brief his superiors. He said a staff member authorized him to do so. He took the copy directly to the State Department where it was secured and maintained in a secure manner until it was turned over to investigators for this committee on April 27, 1976. Mr. Packman declared no copies were made from this particular draft.

As previously indicated, Mr. Rogovin obtained a copy of the final draft of the report from a member of the select committee on Saturday morning, January 24, 1976. From this he had 30 copies made, returning the original to the member from which it was borrowed. The 30 copies were numbered and a record kept of the distribution of each.

Two copies of this draft were sent to the White House, two copies to the Department of State, one copy to the Department of Defense, one copy to the FBI, and one copy to the Office of Management and Budget. The remaining copies were kept for review in CIA.

Seventeen additional copies were made by the agencies to which CIA made distribution, for a total of 24 copies in the possession of these agencies. Of these, 14 were returned to CIA, 5 were destroyed, and 5 are still being retained by the agencies, 4 at the White House, and 1 at OMB.

CIA has destroyed all extra copies returned to it. It still retains 25 copies, 2 of which have some portions missing due to their destruction during review. One of the CIA copies currently is in possession of the investigative staff of this committee.

Everyone in the executive branch identified as having had possession of a complete copy of any version of the draft report was interviewed. These interviews involved 70 persons at CIA, including Director George Bush and former Director William Colby; 10 persons at the White House, including John Marsh, Counselor to the President, Gen. Brent Scowcroft, Assistant to the President for National Security Affairs, and Philip Buchen, Counsel to the President; 46 individuals at the Department of State, including Secretary Henry Kissinger; 45 people in the Department of Defense, including Robert Ellsworth, Deputy Secretary of Defense; 26 persons in the Department of Justice, including Attorney General Edward Levi and FBI Director Clarence Kelley; and 10 employees at OMB, including Donald Ogilvie, Associate Director.

Each person interviewed denied furnishing the report or any portion thereof to any unauthorized persons.

Representatives of the various executive agencies assert no leak of the select committee report or portions of it emanated from the executive branch. They point out Mr. Rogovin did not obtain a copy of the initial draft until about 4 p.m. on January 19, 1976, and copies of this were not available at CIA Headquarters until about 6:30 p.m. Only one copy was disseminated outside of CIA that date, this to William Hyland at the White House, who departed for Europe that night.

CIA stated its Assistant for Press Affairs, Angus Thuermer, sometime prior to 5:10 p.m. on January 19, received a call from New York Times reporter Nicholas Horrocks attempting to verify information which apparently came from the draft report.

Executive agencies representatives declare it is folly to contend they leaked the report to the news media. They point out on January 25, 1976, when Mr. Schorr and the New York Times apparently gained access to the final draft, representatives of the various executive agencies were involved in a meeting at the White House considering means to induce the select committee to delete or revise objectionable information.

The interviews with executive branch personnel did provide some information concerning possible sources of leaks.

Every copy of the report located in the executive branch and examined by the investigative staff was determined to be either the initial draft obtained from the committee staff on January 19, or the final draft obtained from the committee member on January 24, with one exception. The exception was the copy furnished by the committee staff to Mr. Packman.

Mr. Rogovin advised CIA had analyzed the report as published in Village Voice and noted 88 differences between it and the copy CIA obtained from the committee member on January 24.

The Department of Defense reported its Defense Intelligence Agency had done an informal inquiry and concluded the copy they received from CIA on January 24, 1976, was the same as the one used by the Village Voice. A Department of Defense official subsequently advised this conclusion was based solely on a comparison of the pages of the report in which Defense had a direct interest, and a more detailed comparison might well lead to a different conclusion.

This investigative staff conducted a word-for-word comparison of the report published in the Village Voice with eight copies of the report available to us. These copies came from Congressmen McClory, Milford, Kasten, Aspin, and

Stanton, two from the CIA—the initial draft received from the committee staff and the draft obtained on January 24 from a committee member—and the copy obtained from Mr. Packman. A total of 132 significant differences occurring on 101 pages was noted between the various copies and the Village Voice. This did not include spelling and punctuation difference.

None of the copies checked matched the text printed in the Village Voice. Each copy contained page 266 which the Village Voice reported was missing from the copy it received.

Two of the three versions of the draft existing in the executive branch—the copy obtained on January 19, and the copy supplied to Mr. Packman on January 22—contain more than 90 significant differences to the Village Voice.

The third copy which circulated within the executive branch, the one received from the committee member on January 24, had one page which the Village Voice did not have, was missing two pages which the Village Voice did have and contained significant differences in text on two other pages.

Following this review we obtained access to three additional copies of the report from committee members, a review of which also disclosed some significant differences.

A copy belonging to a member of the committee came closest to matching the Village Voice. It had four differences. It had a page which was missing in Village Voice and was missing a page contained in Village Voice. There was a significant difference in text on one page and a one-word difference on another.

The investigative staff has been denied access to copies of the report in the possession of Chairman Pike, and Congressmen Hays and Murphy. Congressmen Lehman and Dellums have stated they returned their copies of the report to the committee staff.

Members of the staff have advised they destroyed all copies of the draft in their possession prior to discontinuing their operation. They could not specify how many copies were destroyed. Presumably, this would have been seven copies, the two turned in by Congressmen Lehman and Dellums, and the five which allegedly remained in the possession of the staff.

The version of the report published by Village Voice contains changes apparently made late on January 23, or possibly even on Saturday, January 24, 1976. These changes were not included in copies of the report disseminated to committee members during the early evening of Friday, January 23.

By June 1, 1976, virtually all logical investigation in the House of Representatives and the executive branch had been completed. No confession had been obtained with respect to the leak of the committee report.

With the approval of this committee, we then began contacting representatives of news media organizations whose names had come up during the investigation, seeking their cooperation. Little was received. One by one these individuals, directly or through attorneys, refused to be interviewed.

Members of the executive committee of the Reporters Committee for Freedom of the Press declined through their attorneys to be interviewed.

John Crewdson and Nicholas Horrock of the New York Times declined through a Times attorney to be interviewed.

An official of Reuters News Agency declined to allow interview with Mr. DeSilva.

Ford Rowan of NBC News, Jim Adams of Associated Press, Charles Gibson of ABC News and Laurence Stern and George Lardner of the Washington Post, either directly or through counsel, declined to be interviewed.

The notable exception was representatives of the Village Voice.

Clay Felker, editor-in-chief of the Village Voice, advised he received a call from Attorney Peer Tufo concerning the availability of the select committee report. He said Mr. Tufo doubted Mr. Schorr would be interested in having the report published in the Village Voice because of an unfavorable article about him which this publication had printed earlier. He said Mr. Tufo called back the following day, however, and said the report would be turned over to him with no strings attached.

Mr. Felker said Mr. Tufo did suggest the possibility of a contribution to the reporters committee, but this contribution was "in no way contingent upon our printing" the report. Mr. Felker said he has made no contribution to the reporters committee nor anyone else with respect to this matter.

Mr. Felker stated the Village Voice no longer has any copies of the report other than what appeared in print. He said the document received from Mr. Schorr had been returned to his attorney, Joseph Califano, "almost immediately or within a

week or two" after the report was printed. He said Aaron Latham, a writer for New York Magazine and Village Voice, had handled this matter, and he did not know whether Mr. Latham or Mr. Califano initiated the action. Mr. Felker said the copies made by his organization "would have been destroyed." He stated Susan Parker, his secretary, had actually picked up the report from Mr. Schorr.

Mrs. Parker advised that on Mr. Felker's instructions she took a shuttle flight from New York to Washington about 11 a.m. on February 6, 1976. She went to an unrecalled address where she picked up a package from a maid and returned to New York by shuttle flight, arriving about 4 or 5 p.m. She was aware the package contained a copy of the Select Committee report. She delivered it to Mr. Felker. It is her understanding the report has been returned to Mr. Schorr's attorney and copies of it have been destroyed.

Mr. Latham stated about 5 p.m. on Friday, February 6, 1976, Mr. Felker gave him a copy of the select committee report and requested he make some copies. He does not recall how many he xeroxed, but thinks it was two or three. He gave one copy to Shelly Zalaznick, editorial director for New York magazine, who was to be responsible for editing the report, sent one copy to the typesetter, and believes he gave one to Mr. Felker, keeping one for himself.

Mr. Latham stated shortly after the first article appeared in Village Voice—this occurred on February 11, 1976—he received instructions from someone in New York to take his copy of the report to Mr. Califano. He took it to Mr. Califano's office. He said he does not know whether Mr. Califano had requested the return of the copy or whether this was done voluntarily by Mr. Felker or his representatives.

Mr. Chairman, you will recall the House adopted House Resolution 1042 mandating this investigation on February 19, 1976.

Mr. Latham said it is his understanding other copies he made have been destroyed. He said the copy returned to Mr. Califano may not have been the one initially received from Mr. Schorr. He recalled the copy they received had one or two pages missing and two or three were of poor quality. He described it as a "clean copy." He did not remember any marginal notations or penciled corrections. He said there was some underlining which he had assumed was done by a reporter.

Mr. Latham's attention was called to the article in the April 1976, issue of Washington Monthly which alleged he had called "a friend on the Pike committee, who * * * made it clear that the Schorr copy, now in possession of Clay Felker, was probably the only one extant." Mr. Latham did not want to discuss his contact on the committee staff.

In this regard, one of the Capitol Police officers, who served on guard duty in the select committee office, has advised that in February, prior to the publication of the report in the Village Voice, he answered several telephone calls from a male with New York magazine asking to speak to one of the committee staff members.

Mr. Zalaznick advised he kept the original copy received from Mr. Schorr which he took with him to Sterling Graphic Arts where he worked continuously until the typesetting job was completed there. On February 10, 1976, he took everything back to his office and about 2 weeks later, on February 27, 28, or 29, he burned the copy of the report in the charcoal grill at his home. Asked why he did this, he said it had served its purpose and he saw no reason to keep it.

Mr. Zalaznick also recalled one page was missing from the copy they received from Mr. Schorr and several pages were very bad and hardly legible. He remembered underlining on various pages but no handwritten notations. He, too, described it as a "clean copy."

Mr. Zalaznick was not aware of the details prompting the return of the copy to Mr. Schorr's attorney. He said it was his understanding the copy of the report given to Mr. Felker had been destroyed.

The president of Sterling Graphic Arts had advised his company never had a copy of the report in its possession.

On June 8, 1976, contact was made with Mr. Califano, seeking an appointment to interview Mr. Schorr. He requested a meeting with members and staff of this committee.

This meeting was held on June 10, 1976. Mr. Califano advised Mr. Schorr would in no way agree to a voluntary interview and, if subpoenaed, would give only a brief statement and would provide no information whatever that would identify, or tend to identify, his sources.

Mr. Califano was subsequently contacted and asked if the Village Voice had returned to him the copy of the draft report which Mr. Schorr furnished that publication. He stated he believes the copy probably is being held by his law firm for Mr. Schorr. He refused to turn this document over to this investigative staff and said he doubts it would be made available on subpoena since it might lead to the identity of the source. He said he did not remember whether the return of the document was requested by him or Mr. Schorr, but eventually said he thought it was by "mutual agreement" with the Village Voice.

Mr. Califano later stated he did not want to further discuss this matter, adding that Mr. Schorr will talk about it on subpoena and "we will go question by question."

A meeting also has been held with an attorney representing CBS employees Richard Salant, Sandy Socolow and Leslie Stahl, but no response has been given to our request for interview.

The security within the committee was mixed. The physical arrangement appeared adequate, with controlled access to committee space and alarms in the safe area.

A problem existed with the reception area where the police guard was located. Visitors in this room could observe work being performed by the office manager and secretaries, also located there, as well as overhear staff conversations. Visitors to this area were not required to sign in on the police log.

The principal difficulty with security, however, was in execution.

Background investigations by the FBI were required on all staff employees, but these generally were not requested until after the person was hired. Summaries of the results of these checks were supplied to the chairman. On his authorization, CIA issued a clearance and provided appropriate briefings. Employees were not given access to classified information until clearance had been received.

The person assigned security responsibility for the select committee was 24 years old when hired in July 1975. She had worked for 2 years in a congressional office. She had no experience or training in dealing with security matters. Her performance led to both praise and criticism. Considerable information was received indicating she was conscientious in her job but often did not receive support from her staff superiors.

Persons interviewed concerning security procedures and regulations adopted by the select committee advised as follows:

Classified material was not always promptly turned in to the document clerk to record and secure.

Classified material often was not maintained in the safes in the secure area.

The regulations required review of classified material only at reading facilities in the secure area and that notes taken from this material must remain in the secure area. This rule was broken on occasions, particularly in times of haste to prepare for hearings and when the report was being drafted. Classified documents were not always signed out when taken from the safe area.

The security regulations prohibited copying, duplicating, recording, or removing classified materials from the committee space, except with specific approval of the staff director. Yet, the Xerox machine was located outside the secure area and was not under the control of the person having security responsibility. A log was devised for the Xerox machine but this was for administrative purposes only to help cut duplicating cost. On one occasion the guard on duty in the office after work hours found a document marked "secret" on the Xerox machine.

At least one staff member complained about the lack of control over the Xerox machine and the fact that anyone could make copies of anything without authorization. She was told by her staff superior not to worry about it.

Security responsibilities were shifted to a different person late in 1975, reportedly to facilitate preparation of the draft report. Considerable conflict allegedly had developed between the security officer's insistence on strict adherence to document security procedures and the hectic pace to complete the draft report.

Combinations to the safe were left on a staff member's desk one Sunday in January. These were used by staff personnel to open the safes and a Xerox of the combinations allegedly was made by one of the staff members.

Mr. FLYNT. The Chair recognizes the gentleman from South Carolina for a motion.

Mr. SPENCE. Mr. Chairman, I move pursuant to House Rule XI 2(k) (5) we go into executive session at this time.

Mr. FLYNT. This is a motion which under the rules of the House must be made in public session, a quorum being present. And the rules of the House further provide that the vote on this motion must be by rollcall.

Mr. TEAGUE. Mr. Chairman, I have a veto message on the floor, I have to be there at 12 o'clock. What is the committee going to do?

Mr. FLYNT. The Chair will be glad to answer that after the vote is taken.

The staff director will call the roll.

Mr. SWANNER. Mr. Flynt?

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence?

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price?

Mr. PRICE. Aye.

Mr. SWANNER. Mr. Quillen?

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague?

Mr. TEAGUE. Aye.

Mr. SWANNER. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert?

Mr. HÉBERT. Aye.

Mr. SWANNER. Mr. Foley?

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell?

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett?

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran?

(No response.)

Mr. SWANNER. Mr. Chairman, 11 members answer aye. One member absent.

Mr. FLYNT. On this vote by recorded rollcall, the ayes are 11 and the nays are none. Accordingly, the committee will go into executive session following a statement by the Chair.

First, I will respond to the question of the gentleman from Texas. The Chair will, I think, probably respond to the question in the statement he is going to make to all members and to all persons present.

If the Chair does not sufficiently answer, the Chair will be glad to clarify.

The committee will go into executive session, and will reconvene in public session at 2 p.m. this afternoon, or as near as possible, depending upon the requirements of the executive session.

The committee will go into executive session. The committee has a witness whom we have invited and he has agreed to appear at 12 o'clock. In the event the committee completes its executive session meeting prior to 12 o'clock, the committee will reconvene here. The Chair made the statement regarding 2 o'clock because the Chair does not anticipate that we can complete the executive session business in 10 minutes.

The committee will reconvene as soon as possible, will reconvene in public session as soon as possible, after the executive session. But, the

Chair is of the present opinion that that executive session cannot be complete within the 10 minutes between now and 12 o'clock, which is the reason that the Chair indicated that we would reconvene at 2.

Having made the statement about reconvening in public session at 2 o'clock or as near as possible thereto, the Chair does make this statement at this time, that the committee will at this time go into executive session and will reconvene at 2 o'clock this afternoon or as near to 2 o'clock as possible in public session.

[Whereupon, at 11:50 a.m., the committee went into executive session.]

Mr. FLYNT. The committee will be in order.

The committee will welcome our distinguished colleague, Otis Pike.

The Chair would like to say that Mr. Pike has been of extreme assistance and cooperation to this committee during the preliminary period of the investigation which led up to these hearings.

We take pleasure in welcoming Mr. Pike before our committee.

Mr. Pike, we propose to give you the opportunity to make a prepared statement of such duration, of such type and in such manner, as you desire. If you prefer not to be interrupted, you will not be interrupted.

Before proceeding to administer the oath and receive testimony, I would like to give you the option of stating whether you would prefer to begin and continue until the second bell rings, or to recess now, and proceed to vote on this and the other suspensions which are before us. We will give you that option.

Mr. PIKE. Mr. Chairman, I do not have any prepared statement. And all of the formal statement I am going to make I can easily get in before the second bells ring.

Mr. FLYNT. All right. Will you stand?

You do solemnly swear the testimony you will give before this committee in matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. PIKE. I do.

Mr. FLYNT. Mr. Pike, you are recognized by the committee to make such statement as you care to.

TESTIMONY OF HON. OTIS G. PIKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. PIKE. Mr. Chairman, I do not have a prepared statement. I stated on the record, on the floor of the House, just about everything which I knew about how that document got printed in the Village Voice. I will only reiterate something which I think gets lost sight of.

Obviously, at the time that this document got leaked to Dan Schorr, the House had not voted not to publish it, and everybody on the committee and everybody on the committee staff believed that it was about to be published.

With that having been said, I will conclude by saying I do not know how the document got leaked.

Mr. FLYNT. The Chair would like to ask our colleague from New York if, to the best of his knowledge, all members of the staff of the Select Committee on Intelligence signed an agreement, item 5 of which stated:

I further agree that until such time as the committee has made its final report to the House, I will not divulge to any unauthorized person, in any way, form, shape or manner, the work product or memoranda of the committee or any material or testimony received or obtained pursuant to House Resolution 591, the 94th Congress, unless specifically authorized by the committee.

Mr. PIKE. That statement was a condition of employment, and while I was not present when these were signed, I believe that they were signed by all of the employees.

Mr. FLYNT. The second bells have now sounded.

Without objection from the members of the committee, concurred in by the gentleman from New York, the Chair suggests that the members of the committee and the witness proceed to the floor of the House, thereon to vote on such matters as will be called for by recorded vote, with the understanding that the committee will reconvene 10 minutes after the bells sound for the vote on the last suspension to come up today.

The committee will stand in recess until the conclusion of the last vote on suspensions.

[Short recess.]

Mr. FLYNT. The committee will come to order.

We will resume the hearings which were interrupted by a series of rollcall votes.

At the time that the committee recessed for the purpose of answering rollcall votes, the gentleman from New York, Mr. Pike, chairman of the House Select Committee on Intelligence, was on the stand, and had completed his statement to the committee.

Counsel, you may proceed.

Mr. MARSHALL. Mr. Pike, you are still under oath.

Mr. Pike, you are appearing here to the invitation of this committee.

Mr. PIKE. Yes.

Mr. MARSHALL. Prior to coming to the hearings, you received copies of the House Resolutions 1042 and 1054, have you not?

Mr. PIKE. Yes.

Mr. MARSHALL. As well as copies of the Rules of this Committee's investigating procedures, and a copy of the chairman's opening statement at these hearings?

Mr. PIKE. I think—no, I had not received a copy of the chairman's opening statement prior to coming here. I had received the rest of the documents.

Mr. MARSHALL. You have, after coming here, examined the chairman's opening statement, have you not?

Mr. PIKE. No, not really. I got here and was handed a copy and proceeded to testify.

Mr. MARSHALL. Do you have any other statement that you wish to make to the committee?

Mr. PIKE. No.

Mr. MARSHALL. Now, you were requested to bring with you various documents relating to the Select Committee's work and activities. Have you produced those documents?

Mr. PIKE. Well, I think so.

Mr. MARSHALL. All right.

May I ask at this time they be turned over to one of our investigators?

Mr. PIKE. Well, I have a little problem with that, because one of the documents which I have with me contains within it material which was deemed by our committee to be sufficiently sensitive in the classified sense that it was removed from the report of our committee and has never been published in any form anyplace, anywhere.

I will give it to the committee. But I want to make it very clear that it has within it items more sensitive than were included within our report.

Mr. FLYNT. The Chair gives the witness the assurance that the document to which the witness refers will not be made available nor disclosed to any unauthorized person.

Mr. PIKE. What I have, Mr. Chairman—and let me identify these documents. This was the first draft of our report. It does contain within it items which were subsequently eliminated from our report as approved.

This is the final version of our report.

Mr. FLYNT. Each of the two reports to which you have referred orally consists of two volumes each.

Mr. PIKE. Each consists of two volumes. And these were the original draft prepared by the committee staff, and the final original draft prepared by the committee staff. Your letter requested me to bring all copies of the report within my possession. This was the final report as printed, of which I have a copy. None of these versions is the version which was printed in the Village Voice.

Mr. MARSHALL. Thank you, Mr. Pike.

Mr. Pike, in the event that your evidence or testimony may involve any information or data concerning an executive session of the select committee, or classified information, or information which may tend to defame or degrade or incriminate any person, I would like to request that you inform this committee of that in a timely fashion, so that it may take appropriate action under the Rules of the House of Representatives.

Mr. PIKE. I will endeavor to do so, Mr. Marshall. But in all candor, I am obliged to say that I am not going to remember necessarily what took place in an executive session, and what took place in an open session.

Mr. MARSHALL. Well, if you will do the best you can.

Mr. PIKE. I will do the best I can.

Mr. MARSHALL. Thank you, sir.

Before you, Mr. Pike, you have a copy of the rules and regulations which were adopted by the Select Committee on Intelligence, in that package.

Pursuant to sections 2 and 6 of House Resolution 591, the Select Committee on Intelligence adopted those rules and security regulations, is my understanding; is that correct?

Mr. PIKE. That is correct.

Mr. MARSHALL. Do you recall when those were adopted, sir?

Mr. PIKE. Well, I cannot give you the date. But it would have been within the first couple of weeks after I became the chairman of the select committee.

Mr. MARSHALL. If we assume that House Resolution 591 was passed on July 17, 1975, would it have been within a couple of weeks of that date?

Mr. PIKE. After that, yes.

Mr. MARSHALL. Now, during the course of adopting these rules and regulations, some of which pertain to guarding classified information or other sensitive data, did you receive any offer of help from the Central Intelligence Agency as to how these regulations and rules ought to be formulated?

Mr. PIKE. We received offers from them as to how they ought to be written. They wanted to write them for us.

Mr. MARSHALL. And did you accept that offer with regard to formulating the rules and regulations?

Mr. PIKE. No, we did not.

Mr. MARSHALL. To whom did you go for expert advice, if anyone, concerning adoption of rules and regulations?

Mr. PIKE. We looked at the rules and regulations of other committees of the House, including most of the committees, if not all of the committees, dealing with classified information.

Mr. MARSHALL. Was there anyone on the select committee's staff whom you deemed to be an expert in security regulations?

Mr. PIKE. I do not know about security regulations. We had one employee of our staff who had himself been with the CIA for many years.

Mr. MARSHALL. Could you identify that employee?

Mr. PIKE. Not by name, but he was the man who signed documents in and out of—I don't recall his name. He was the man who signed documents in and out of the committee room.

Mr. FLYNT. Could you supply his name for the record?

Mr. PIKE. I expect—yes, I could supply his name for the record.

Mr. MARSHALL. Now, with regard to the rules and regulations which the select committee adopted, did they prove to be adequate for the task?

Mr. PIKE. Oh, I don't know whether they were adequate for the task or not. If you think that by adopting the right set of rules you are going to eliminate problems of leaks, then they were obviously inadequate for the task. I do not think that rules alone are enough to do it.

Mr. MARSHALL. What problems did you encounter with the security regulations, or guarding classified information to prevent leaks?

Mr. PIKE. Well, there were unquestionably leaks during the course of our investigation. Where they came from, whether they came from our committee or elsewhere, I do not know.

Mr. MARSHALL. Were any steps taken during the course of your investigation, when these leaks were called to your attention, to identify the source of the leaks?

Mr. PIKE. We tried on a continuing basis to identify the source of the leaks. We were not very successful.

Mr. MARSHALL. Did you have any success whatsoever in identifying particular persons who were sources of leaks outside the select committee?

Mr. PIKE. As far as being able to prove it, the answer is "No."

Mr. MARSHALL. Did you have any evidence which came to your attention which led to a particular person?

Mr. PIKE. Nothing I would call admissible evidence. I will not pretend I did not have some suspicions.

Mr. MARSHALL. Were there any written investigations conducted by the select committee concerning the identity of these persons who were suspected?

Mr. PIKE. What do you mean by a written investigation?

Mr. MARSHALL. Memoranda or writings which are part of the select committee documents.

Mr. PIKE. Not that I am aware of, no.

Mr. MARSHALL. Now—

Mr. PIKE. It was discussed at hearings and the hearings themselves would be written, the minutes of the hearings are written. But other than that, the answer is "No."

Mr. MARSHALL. On the CBS Television News of January 28, 1976, Mr. Schorr showed what appeared to be a draft of the select committee report. Was that fact called to your attention, that is that Mr. Schorr had exhibited something which appeared to be a draft of your select committee's report?

Mr. PIKE. It was called to my attention subsequently, but not at that time.

Mr. MARSHALL. How long after that particular newscast?

Mr. PIKE. I don't know.

Mr. MARSHALL. Was it a matter of a few days or—

Mr. PIKE. I do not recall.

Mr. MARSHALL. Did the committee undertake any investigation to determine the source of that report, as to how Mr. Schorr got it?

Mr. PIKE. No.

Mr. MARSHALL. Was there any particular reason for that?

Mr. PIKE. Yes, there certainly was. First, our charter was about to expire 3 days later, and second, we had completed our hearings, and had no authority left except to do recommendations, which we did in open session.

Mr. MARSHALL. Putting aside for the moment the time pressures that you have just described, in your judgment did your committee have the staff to undertake such an investigation?

Mr. PIKE. No; not really.

Mr. MARSHALL. Now, subsequently, a draft of your committee's report was published in the Village Voice on February 16 and 23, 1976. Do you have an opinion—

Mr. PIKE. I want to correct you by stating it was a partial version of an almost final copy of our report.

Mr. MARSHALL. All right.

Did your committee at that time or anyone to your knowledge attempt to obtain the identity of the source of Mr. Schorr?

Mr. PIKE. No.

Our committee at that time had completed its work.

Mr. MARSHALL. Have you ever had any conversations with Mr. Schorr concerning the leaks or the identity of his sources?

Mr. PIKE. The closest I ever came to a conversation with Mr. Schorr on the subject of leaks would have occurred at an earlier time involving a different story from the publication of our report.

Mr. MARSHALL. Could you be more definite as to when this particular conversation occurred?

Mr. PIKE. I cannot tell you when, but I can tell you the subject matter if you want.

Mr. MARSHALL. All right.

Mr. PIKE. The subject matter had to do with the role of the CIA in supporting a particular insurgent movement, and I suppose that beyond that it would have to be classified.

Mr. MARSHALL. All right. And what did Mr. Schorr have to say about the sources?

Mr. PIKE. We did not have a conversation as such. He was in the room. There had been a story on a Saturday afternoon—a Saturday evening, rather, on CBS television, given by Mr. Schorr. This was either the following Monday or the following Tuesday. And I expressed my unhappiness at the fact that this had been made public. One of the other members—and I cannot remember which other member—asked that we put Mr. Schorr under oath—I think that is the way the matter went—and ask him. And I declined to do so, saying that I thought Mr. Schorr would happily go off to jail rather than reveal the source of this particular story. And that was as close as I came—Mr. Schorr was right there. Mr. Schorr said nothing.

Mr. MARSHALL. Did you have any conversations with any other newsmen about the source or identity of their information which came out from the committee?

Mr. PIKE. Not prior to the publication in the Village Voice, I don't think. I did have some after that occasion.

Mr. MARSHALL. Can you tell us about those conversations, please?

Mr. PIKE. Oh, I asked certain people who they thought might have leaked certain things. And some people would give me hints, but mostly they would give me nothing.

Mr. MARSHALL. Can you tell us what hints those same people gave you?

Mr. PIKE. No; I am not going to do that, because all I have is suspicions, and I am not going to indulge in suspicions.

Mr. MARSHALL. Do you have anything which you would term evidence which you would like to bring to this committee's attention?

Mr. PIKE. No. I have, as I said earlier—that which I had which was solid, I put in the record back on March 9.

Mr. MARSHALL. Now, as I understand it, the first complete draft of your committee's report was a draft of January 19, 1976.

Mr. PIKE. That is correct.

Mr. MARSHALL. What was the distribution of that draft?

Mr. PIKE. Well, each member of the committee got a copy, and whether the CIA and—yes; that was given out to the executive branch as well as to our committee members, for their comments.

Mr. MARSHALL. Was the CIA the initial point within the executive branch that report was distributed to?

Mr. PIKE. I frankly was not doing this liaison myself, so I may be wrong about this, but I believe that copies were given to the CIA, to State, to Defense, and to the White House. But I could be wrong about that.

Mr. MARSHALL. Who was in charge of making that distribution for the committee?

Mr. PIKE. Mr. Field.

Mr. MARSHALL. And I take it he would probably have the best evidence.

Mr. PIKE. I would think so.

Mr. MARSHALL. Was there anyone else who received a copy of the January 19 draft, other than the persons or departments that you have already testified to?

Mr. PIKE. Well, I do not know what happened to them once they got into the executive branch. But as far as the House of Representatives is concerned, the answer would be the committee and the committee staff. That is all. And not all the committee staff.

Mr. MARSHALL. With regard to the January 19 draft, were security markings on the face of that draft?

Mr. PIKE. No.

Mr. MARSHALL. Was there any cover letter or other accompanying document to indicate whether that draft contained classified information at the time the distribution was made?

Mr. PIKE. I don't think so. But I am not sure. I think we did not deem that to be a classified document at that time. But there was a letter of transmittal, I believe, but I do not believe that it referred to the document as classified.

Mr. MARSHALL. Did the January 19 draft contain classified information?

Mr. PIKE. Well, you can argue about that forever. The committee thought that it did, and took some of it out.

Mr. MARSHALL. When you say, "took some of it out," were the matters deleted taken out before or after the January 19 draft was distributed?

Mr. PIKE. After.

Mr. MARSHALL. Now—

Mr. PIKE. The staff, on the other hand, believed that there was nothing in it which should not be in it.

Mr. MARSHALL. Was a log kept by the committee or a member of its staff as to who received the January 19 draft?

Mr. PIKE. Well, I believe so, but I didn't keep such a log.

Mr. MARSHALL. Now, as I understand it, various changes were then made in the January 19 draft by the committee, going through an editorial process.

Mr. PIKE. That is correct.

Mr. MARSHALL. How were those changes accounted for within the committee, and within the persons who received copies of the draft? In other words, was a numbering system set up so that various pages were numbered and you knew to whom those pages were distributed? Or was there some other system followed so that there could be an accounting for what the changes were, who got the changes, and what happened to the old pages?

Mr. PIKE. Well, we went through the draft page by page essentially. And there would be pages in which no changes would be made. And then there would be pages in which changes would be made. What we used by and large was this document, which is also classified top secret, and these were certain items that the executive branch wanted either changed or removed from our report. And as we came up to each one of these, we would discuss it.

Apparently it did not begin—I haven't looked at this for a long time, but the first comment on here is—begins on page 21. So apparently there was nothing, at least from this agency, until page 21.

Mr. MARSHALL. Now, as I understand it, the final draft of the com-

mittee report, which was adopted, was a draft of January 23, 1976.

Mr. PIKE. That is correct.

Mr. MARSHALL. Now, were members who received this draft, or any other persons who received this draft, advised that it contained classified information, if it did?

Mr. PIKE. The answer is "No." And at that point, by the time those deletions had been made, and the final version was adopted, it was the opinion of the committee that there was nothing in it which should be classified.

Mr. MARSHALL. So it is your testimony that the January 23, 1976, draft, that is the final draft, contained no classified information.

Mr. PIKE. It was the judgment of our committee that there was nothing in it which should not be published.

Mr. MARSHALL. Was that your judgment as well?

Mr. PIKE. It was, indeed. I voted with the majority of the committee. The vote was 9 to 4.

Mr. MARSHALL. Were there any instructions given to the members or to the staff on how to prevent disclosure of drafts in their distribution?

Mr. PIKE. As far as the drafts were concerned; no.

Mr. MARSHALL. Have you had an opportunity to examine the Village Voice for February 16 and 23?

Mr. PIKE. I have.

Mr. MARSHALL. Did this draft contain, or whatever part of that draft, contain classified information?

Mr. PIKE. It contained, once again, nothing which the committee had not voted to publish.

Mr. MARSHALL. My question is: Did it contain information which had been classified at least at the time it was received by the committee?

Mr. PIKE. Oh, absolutely.

Mr. MARSHALL. It did?

Mr. PIKE. Oh, absolutely.

Mr. MARSHALL. Would that also be true with regard to the January 23 final draft which was adopted by the committee?

Mr. PIKE. Yes.

Mr. MARSHALL. That it contained information which was classified at the time of the reception?

Mr. PIKE. Oh, yes.

Mr. MARSHALL. Was that information—

Mr. PIKE. Let me—in fairness to the CIA, I think I ought to say here that this document of their objections would have wiped out better than half of the report. Well, the first page says—"Delete names of Donald Gregg and Seymour Bolton. Both are on-duty agency officers."

Well, this is a matter of policy with them. They consider that classified. The fact is that both of these on-duty agency officers had testified before our committee in open session as on-duty CIA officers. So there were just huge quantities of stuff which they deemed to be classified.

Mr. MARSHALL. But the information at the time it was received was classified by the CIA, or some other department of the Government, and the committee determined in their judgment it should not be

classified to the extent it appeared in the January 23 draft. Am I correct in assuming that it was the committee itself which "declassified" these documents?

Mr. PIKE. Well, on that particular item the CIA agreed with us. We did it, and they said "OK."

Mr. MARSHALL. Was it your testimony that any information in the January 23, 1976, draft, which had been classified earlier, had been declassified with the concurrence of the CIA?

Mr. PIKE. Not all of it; no, but most of it.

Mr. MARSHALL. There were some pieces of information?

Mr. PIKE. There were some.

The Bureau of the Budget, for reasons I do not understand, objected to almost everything in the report, and the CIA would agree to declassify stuff that the Bureau of the Budget would not agree to declassify. So the CIA was saying it is all right to include this, and the Bureau of the Budget would say; no, it is not all right to include this. We ran into that kind of situation.

Mr. MARSHALL. In those instances where the committee made the decisions that items should be unclassified or declassified, and did not receive the concurrence of the agency or department which had put the initial classification on it, what was the authority of the committee or what did it deem its authority in declassifying?

Mr. PIKE. I would say our authority to report to Congress under the resolution which created us.

Mr. MARSHALL. When the January 23, 1976, final report of the select committee was adopted, was there any discussion about whether that should be made available to the public or disclosed to persons outside of the select committee?

Mr. PIKE. Not that I recall. I can't really remember the discussion on January 23. Not all of the members were there. The member who would have most likely not to want it published was not present. I do remember that. And so I don't recall any discussion of it, and I believe that all of the members thought that it was about to be published.

Mr. MARSHALL. Now; were there any advance copies given to the press of the January 23, 1976, draft?

Mr. PIKE. Not by me or with my authorization.

Mr. MARSHALL. Do you know of any that were given by anyone with or without authorization?

Mr. PIKE. No.

Well, that is not a wholly accurate statement. I fully believe that Dan Schorr got one.

Mr. FLYNT. From a member.

Mr. PIKE. I have no idea where he got it from.

Mr. MARSHALL. Was there anyone in charge of press relations on the select committee?

Mr. PIKE. No, we did not have a press person.

Mr. MARSHALL. Let me invite your attention to rule 7.3 of the rules of the select committee, a copy of which I believe you have before you.

That rule states and I quote:

Until such time as the committee has submitted its final report to the House, classified or other sensitive information in the committee records and files shall not be made available or disclosed to other than the committee membership and the committee staff except as may be otherwise determined by the committee.

Now, was the committee's interpretation of that rule that as soon as it adopted a final report, that final report could be disclosed at will? Or was there a different interpretation?

Mr. PIKE. No; I think that is—I would say the answer to your question is "Yes."

Mr. MARSHALL. But you had no knowledge as to whether any disclosures were made outside of the committee other than the Village Voice and what you were able to read there?

Mr. PIKE. Well, no, that isn't totally accurate. I mentioned earlier another incident in which I had discussed a story which Dan Schorr had had on television, and that was at a separate time, but it did not have to do with the leak of our report. It had to do with a disclosure of information. I, in that instance, do not know that it came from our committee or whether it came from the executive branch.

Mr. MARSHALL. Now, were there any logs kept by your committee which would indicate the precise distribution made to various persons of the drafts of January 19 and 23?

Mr. PIKE. I do not know the answer, but I believe that there were. I do not know the answer. I did not keep such a log. I did not keep a distribution log.

Mr. MARSHALL. I take it from your answer that the logs are not among the documents that you divulged to this committee?

Mr. PIKE. They are not.

Mr. MARSHALL. Mr. Pike, during the course of your committee's work were members of the media permitted in the staff working space, that is past the security arrangements, that is the policeman on the door?

Mr. PIKE. Under certain circumstances. They had to log in and log out. We kept a log of any visitors other than staff people during working hours. Even staff people after hours had to log in and out, and any newspaper people or any other visitor had to log in or out.

Mr. MARSHALL. Was there a separate space which the committee made available for the use of classified information, reading areas, and that sort of thing?

Mr. PIKE. Yes.

Mr. MARSHALL. Were any members of the media allowed there?

Mr. PIKE. Well, not within the room where the documents were kept, unless perhaps to look at where the documents were kept. But, the answer I would say is "No."

Mr. MARSHALL. Who is responsible on the staff to be sure that no media persons or any unauthorized person were not allowed access to the information that was classified?

Mr. PIKE. Well, in the final analysis I suppose on any committee the ultimate responsibility rests with the chairman, so I will say it was probably my responsibility, but I wasn't down in the committee room.

Mr. MARSHALL. Putting aside—

Mr. PIKE. As far as the staff is concerned, our chief of staff was Searle Field.

Mr. MARSHALL. And that would have been Mr. Field's operational responsibility to see that those were carried out?

Mr. PIKE. I don't know what you mean by operational. It would have been his ultimate responsibility. Whether he delegated that further down or not I am not sure.

Mr. MARSHALL. But you think perhaps Mr. Field would have been in charge of the day-to-day operations of the select committee staff and its access or lack of access?

Mr. PIKE. He was the chief of staff.

Mr. MARSHALL. Now, could you recall being present or having reported to you that on December 31, 1975, Mr. Schorr and Mr. Stern and some other members of the media were in the committee staff spaces where classified material was?

Mr. PIKE. I think Mr. Bowers told me that.

Mr. MARSHALL. That did not come to your attention before you talked to Mr. Bowers?

Mr. PIKE. No. That would have been during the Christmas recess, and I don't think I was aware of it.

Mr. MARSHALL. You were not present?

Mr. PIKE. No.

Mr. MARSHALL. Now, directing your attention to House Resolution 982 which reads in part:

The Select Committee on Intelligence shall not release any report containing materials, information, data or subjects that presently bear security classification until and unless such reports are published with appropriate security marks and distributed only to persons authorized to receive such classified information, or until the report has been certified by the President as not containing information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries, or the intelligence activities in foreign countries of any other department or agency of the Federal Government.

Did the President ever approve the draft under those conditions or were drafts distributed with security classifications as provided for by House Resolution 982?

Mr. PIKE. Wasn't that the resolution that was passed after Mr. Schorr got the report?

The answer to your question is "No." But I believe that that resolution was not passed until after Mr. Schorr got the report.

Mr. MARSHALL. Yes, sir. But, of course, we don't know for sure when Mr. Schorr got the report, except in view of his public statements to the press. But, this resolution was passed on January 29, 1976.

Mr. PIKE. Right.

Mr. MARSHALL. And you are correct, Mr. Schorr is reported in the press as saying he had the report on January 25, 1976.

Mr. PIKE. Right.

Mr. MARSHALL. My question is—

Mr. PIKE. The answer is "No."

Mr. MARSHALL. Neither one of those conditions contained in that resolution pertained?

Mr. PIKE. That is correct.

Mr. MARSHALL. Mr. Pike, your committee has had first hand experience with problems of obtaining, safeguarding, and using classified material. Do you have any recommendations to this committee concerning the experience that your committee has had that you think may be helpful to this committee in carrying out its task under House Resolution 1042?

Mr. PIKE. Yes. I guess I probably do. Although I am not sure that it would be what the committee would want to hear.

I really think that we have spent too much time with the procedures of our report and not enough with the substance of it. You refer to

the obtaining, safeguarding, and distribution of classified information, and I would only say that as far as Congress is concerned, the biggest problem still remains getting it.

Mr. MARSHALL. Do you have any recommendations as to how the classified material ought to be handled once it has been received or do you feel that the select committee's rules on that subject are sufficient, if they are carried out?

Mr. PIKE. I think that if they had been carried out the rules would have been sufficient.

There has got to be an element of good faith in the operation of any committee. If the good faith is lacking, the best rules in the world aren't going to make it work.

There were things which were not in our report, and which our committee did not look at because we were convinced that looking at them would truly be detrimental to our Nation's security. There were other things in our report which, in our judgment, cried to be published and still cry to be published.

We had the job of making judgments about whether we would tell the truth about situations which we discovered in our investigation or whether we would perpetuate the falsehoods which had been published up to that time about these situations.

In every instance in which the final party line was false, and the truth was stamped "secret", we had to make that determination.

In those instances which we investigated, and some of these were very old, Vietnam war, for example, the Russian invasion of Czechoslovakia, the substance showed a tremendous breakdown in our intelligence system, and they still wanted to keep this all secret.

Mr. MARSHALL. When you say they, if I may interrupt—

Mr. PIKE. The CIA and the White House. And it just seemed to me that our national security would be better served in the large sense if the truth were told than if the secret were sustained.

As far as what you do to people who leak secrets, well, obviously if you know who they are, you kick them off the committee or off the staff or out of the CIA, or out of the White House. But as I said earlier, I don't know where the leaks came from. I know that they hurt the committee and they helped the CIA.

Mr. MARSHALL. You may have already answered this by the last part of your previous answer and by your opening statement, but let me ask it again so the record can be absolutely clear. Do you have any knowledge whatsoever of the circumstances surrounding the publications of the select committee's report or any part of it?

Mr. PIKE. Yes, I have some knowledge.

Mr. MARSHALL. Would you tell us what that knowledge is?

Mr. PIKE. Well, I read Dan Schorr's article in Rolling Stone Magazine about how he got this report, and I presume it to be accurate.

Mr. MARSHALL. Other than that, do you have any knowledge surrounding this?

Mr. PIKE. I have no knowledge personally which has not been made public. As I said earlier, I have some suspicions, but I have no evidence.

Mr. MARSHALL. You did not give the report to Mr. Schorr yourself?

Mr. PIKE. I did not give the report to Mr. Schorr myself.

Mr. MARSHALL. Then you know of no one who did?

Mr. PIKE. I do not know how Mr. Schorr got his report.

Mr. MARSHALL. Mr. Chairman, I have no further questions.

Mr. FLYNT. Mr. Pike, do you feel that the legislative branch, its members, officers and employees, are bound by classifications imposed on documents by the executive branch?

Mr. PIKE. That is a tough one, Mr. Chairman. I think that prima facie the answer is yes. But I think that you can't abandon all judgment when you run into a rubber stamp. And as I said, this is the list of objections and things that they wanted removed from our report, and it constituted about half the report. And I think that this is not a matter for preemption by either branch.

Mr. FLYNT. During the period while you served as chairman of the House Select Committee on Intelligence, did you ever on occasion, or frequently, have opportunity to see and study the contents of documents which you considered to have been overclassified?

Mr. PIKE. Mr. Chairman, I rarely saw documents which I did not consider to be overclassified. And I will tell you what I think happens, if I may expound on that a little bit, I think that something gets classified at a point in time, and I think that the shelf life of a secret ought to be very short, because after a while how our intelligence failed say in the Vietnam war or in Czechoslovakia is not going to be as dangerous to reveal as it is to conceal, because if we conceal it, we won't cure it, and just time and time again we ran into all kinds of stuff which was classified which should not have been.

Mr. FLYNT. One question before we take a break. Am I correct in inferring from your answer to the last question that you disagreed with the periodic gradual declassification of such documents?

Mr. PIKE. No, Mr. Chairman. I would agree with it, except that they have now built into the rubber stamp an exception from it, and the rubber stamp itself says "exempt from periodic declassification under rule such and such." So they stamp them and already they are exempt. I am a great believer in the periodic declassification of documents.

Mr. FLYNT. The bells have sounded. First of all I will ask Mr. Pike do you desire to respond to the rollcall?

Mr. PIKE. If it is a vote, the answer is "yes."

Mr. FLYNT. We will temporarily suspend and we will resume as soon as we can.

[A short recess was taken.]

Mr. FLYNT. The committee will come to order to resume the hearing.

At the time the committee suspended for members to respond to a recorded vote of the House, the gentleman from New York, Mr. Pike, was on the stand.

Mr. Pike, I believe that you have previously identified three documents, two of which consist of two volumes each. I believe you have other documents there which you brought to the committee.

Would you identify them?

Mr. PIKE. These are the log books showing who came into our committee offices when, and all of the rest of this is stuff which your committee has given to me rather than my having.

Mr. FLYNT. The log books and the other documents will be received, but will not necessarily be included in the report of these hearings.

Mr. MARSHALL. Mr. Pike, just a few questions.

Evidence has come to this committee's attention that on December 31, 1975, New Year's Eve, members of the Select Committee staff in-

vited several newsmen to the committee office. These included Lawrence Stern of the Washington Post, James Adams of the Associated Press and Daniel Schorr of CBS.

These reporters were given a thorough briefing concerning the committee's investigation of the FBI's purchase of electronic devices from the U.S. Recording Co. Reporters were allowed to review for themselves a transcript of the interview the committee staff conducted with a witness.

Now, did you ever give any advance approval of this meeting with the reporters under circumstances that I have outlined?

Mr. PIKE. No. But I probably would have if I had been asked. Without knowing what the documents in question said, I would want to know what the documents in question said, but as far as briefing of reporters, I probably would have agreed to it if they had asked me.

Mr. MARSHALL. And that would have included allowing the newsmen to review for themselves a transcript of an interview the committee staff had conducted with a witness on this point?

Mr. PIKE. Well, as I say, I would want to know what the thing said and what the purpose was. If it was to clear up some discrepancy in the testimony, which was the usual question, I would have agreed to it. If it was to create some new story I would not have agreed to it.

Mr. MARSHALL. I take it if it had been in executive session you would not have agreed to it.

Mr. PIKE. That is correct.

Mr. MARSHALL. Would you consider that a violation of the employee agreement that each staff person was asked to sign?

Mr. PIKE. I simply can't generalize on that. I would want to know what the document was about, and what the briefing was about.

Mr. MARSHALL. All right, sir. As I understood your testimony earlier, you said that the House resolution which created the select committee, in your judgment, gave that committee authority to declassify information which had been classified by other departments of the Government?

Mr. PIKE. No, it gave our committee the authority and the obligation to report back to Congress on what we found. There wasn't any way we could report back to Congress on such things as the way our intelligence failed in certain areas, illegal activities that we found in other areas, without including the information which had been classified in the past.

Mr. MARSHALL. Is it your statement, sir, that you thought that House Resolution 591, which was the resolution setting up your select committee, after which you took the chairmanship, required that any report that your made back to Congress containing information which was classified should be made public?

Mr. PIKE. Not necessarily, no. I think that was a matter for our committee to exercise its judgment on.

Mr. MARSHALL. And as I understand your testimony, it was the requirement that your committee report back to Congress that you determined to be the basis for your committee to exercise judgment concerning declassification?

Mr. PIKE. No, it is the authority to file a report. It is not just the authority, it is the mandate to file a report. Everything we were dealing with had to do with previously secret activities. There was no way

we could file a report without going into—without having the content of say a war in Angola, and if they insisted on maintaining that we couldn't say anything about a war in Angola, even if you didn't mention the word "Angola," we weren't going to hold still for that.

Mr. MARSHALL. Does that "they" refer to the CIA again?

Mr. PIKE. Here I am referring to the CIA, the White House, and the State Department in camera.

Mr. MARSHALL. Are you saying, sir, there are now no procedures for a committee to report back to Congress under less than public disclosure?

Mr. PIKE. Oh, there are procedures by which that can be done.

Mr. MARSHALL. Did your committee consider those as a possibility of filing its report?

Mr. PIKE. Yes. I think we did, and I think that the committee decided that that was not the way to do it.

Mr. MARSHALL. And on the authority that you have previously testified?

Mr. PIKE. Yes. There was nothing in our report which in the judgment of the majority of the members of the committee in any manner jeopardized our national security.

Mr. FLYNT. Mr. Teague?

Mr. TEAGUE. Otis, do you believe it's humanly possible under our system of government for a committee acting like yours, with the staff you required, that you can receive classified material and not have leaks?

Mr. PIKE. Well, I am not sure. I think it's possible.

Mr. TEAGUE. It seems to me that this should be a basis for somebody, Judiciary Committee or this committee or some committee to at least write some guidelines for classified material to be handled in the Congress.

Now, I don't have any leaks in my committee, we just don't hear any classified material.

Mr. PIKE. That was one of the options which they offered to us.

Mr. TEAGUE. Could you have done your job without having to take classified material?

Mr. PIKE. No way.

Mr. TEAGUE. No way. Well, of course, one of the worst leaks, if my information is correct, when the Russians put their first manned space flight up we heard every word they said, we knew exactly what they were doing, and they told two committees, and it was leaked from one of the committees that we did have their codes and what not. But I don't believe it's humanly possible to have two committees of 20 or 30 men and staff and have classified material and not have leaks.

That is all, Mr. Chairman.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Thank you, Mr. Chairman.

Mr. PIKE, I have laryngitis and I will try to speak loud enough.

Mr. PIKE. You may skip the questioning altogether if you want.

Mr. SPENCE. It wouldn't be hard, you are a smart man.

Do you think that a committee of Congress, in general, and maybe your select committee in particular, has the background and experience to be able to say that information which has been classified, if released, would not do harm to our national security?

Mr. PIKE. Yes.

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. I have no questions, Mr. Chairman.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Thank you, Mr. Chairman.

Otis, you stated that your committee voted nine to four that the material in the report was not classified, that it would be released.

Mr. PIKE. We voted to approve and release our report, nine to four. That is correct.

Mr. QUILLEN. Now, does a committee accepting classified and secret material have the authority to declassify?

Mr. PIKE. I believe it does.

Mr. QUILLEN. When you appeared before the Rules Committee, of course we had some conversation, but during that time you stated that the report did contain classified and secret information, and then later on the floor of the House when asked the same question I believe you responded likewise.

Did you mean in that event that it was classified and made secret by other parties?

Mr. PIKE. No. I meant it was information which the executive branch, when they gave it to us, had labeled as classified.

Mr. QUILLEN. When the resolution was before the House the House voted 246 to 124 not to release the report.

Mr. PIKE. They did indeed.

Mr. QUILLEN. That is a little—I don't know how you would figure it—but it's about the same majority in opposition as your committee was for it.

Mr. PIKE. There was one essential difference, Mr. Quillen. You are absolutely right on your statistics, but there was one essential difference. The House voted not to release a document it had not seen.

Our committee voted to release a document it had read.

Mr. QUILLEN. Well, that is true. I am assuming that a majority of the Members of the House had not seen the document.

Mr. PIKE. None of them had seen it except the members of our committee.

Mr. QUILLEN. But on the other hand, there was strong evidence, and as I said earlier, I had some of that evidence in my possession, had the vote not gone as it was I was going to make a motion that the House go in secret session and then I was going to produce such information.

It would seem to me that the House and a committee should not have a confrontation or likewise, the committee and the House, and that in the case of any classified material so designated and any secret material so designated by any originating process, it should be on order to let the originator change it on its own.

I might look at a document and say, "Oh, well, my view on Vietnam was one way and my view on Angola was another way." Well, that information should be released to the public, but that is my judgment. I don't know what the judgment for the benefit of my country would be. But I have a feeling that the matter probably should have been resolved and kept in its perspective, so classified, without the con-

frontation on the floor of the House, and without what is happening today.

Do you think maybe if the committee had an opportunity to do it over it would do it differently?

Mr. PIKE. I don't believe so. I don't know. But I don't believe so. I think, obviously I would certainly prefer that the House had gone your route and gone into executive session to hear or read the report, than to censor it completely and refuse to read it at all. I don't know whether you have read the report or not, but I haven't found that our Nation has suffered as a result of its publication or that the CIA has been hurt as a result of its publication and I suspect you can hear people who will make the arguments both ways.

But, it seems to me that suppressing the report was worse than publishing it.

Mr. QUILLEN. I have not read the report. It is available?

Mr. PIKE. Our basic problem is almost nobody in the Congress has read the report. I have had a lot of people who have read the report who have come to me and said what is all of the fuss about?

Mr. QUILLEN. It's available?

Mr. PIKE. Yes, it's available.

Mr. QUILLEN. Under certain restrictions?

Mr. PIKE. Absolutely.

Mr. QUILLEN. You go sign for it and read it in an appropriate way, and abide by the rules and regulations. Now, the point that I want to make is that somebody, and now I don't know who, Otis, somebody did not abide by those regulations.

Mr. PIKE. That is correct.

Mr. QUILLEN. That is the purpose of this investigation, to see if we can find out. But as I said on the floor of the House in handling the resolution, I don't question the integrity of anyone. We are all Americans and we all have certain viewpoints, but if we are going to have a system that provides for classified and secret material, then we ought to abide by that system, or change it.

Mr. PIKE. Well, we have tried to change it a few times and we always run into the loophole that I told you eariler. They have the periodic declassification system and they put an exemption on it in order to save the very top formula for making atomic weapons, and they put that exemption right on the rubber stamp, so everything is exempt from the system. And I don't know exactly what the legislative branch of the Government is supposed to be, but in my judgment it is supposed to be a coequal branch, and should not roll over and play dead every time the executive branch stamps something secret.

I have forgotten the numbers, I put it in one of my speeches, I think there is something like 20,000 people in the executive branch who can create a secret by applying a rubber stamp to a piece of paper and nobody in Congress, in the view of some, this is not my view, in the view of some, has any right to second guess any of these bureaucrats.

Mr. TEAGUE. Would the gentleman yield?

Mr. QUILLEN. Yes, I will be glad to yield.

Mr. TEAGUE. Otis, isn't it true there is a system of need to know where you and your committee, they can show you anything they want to, or every Member of Congress?

Mr. PIKE. I expect there is a system like that. But the guy who decides who needs to know makes the decision as to who needs to know.

Mr. TEAGUE. I assume like Jet Propulsion Lab in California makes certain decisions, certain areas of the Defense Department make certain decisions.

Mr. PIKE. But nobody in Congress.

Mr. TEAGUE. But I don't think everybody in Congress needs to know everything.

Mr. PIKE. I agree. I don't think they do either, but I think Congress acting through its duly constituted committees has a right to participate in the decision as to who needs to know.

Mr. TEAGUE. Neither do I think the press needs to know everything. No comment?

Mr. PIKE. I will let that be your comment.

Mr. TEAGUE. I will repeat it.

Mr. QUILLEN. Seriously, and I thank the gentleman from Texas, and I agree, if we have complete openness in the defense of this Nation, and the security of our Nation is at stake, then I don't think the press would want to do violence to their country and it's their country the same as ours, and neither do I think any Member of Congress wants to, but somehow we are all mixed up in that we think that secrets so labeled by others are not secrets so labeled by us. And how do we resolve this?

Maybe out of this hearing we can come up with some suggestions. That is all, Mr. Chairman.

Mr. PIKE. I agree with you, Mr. Quillen, and in our recommendations we addressed ourselves to this issue, and I know Senator Church's committee did also.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Well, I am a little bit not informed perhaps because I was over there voting at the time, but I am not quite sure if it's your position that any and all committees of Congress can declassify secret material.

Is that your position or is it a special thing about your committee?

Mr. PIKE. I think that any committee of Congress, in regard to information over which it has jurisdiction, should have a coequal right to publish information with that of the executive branch to keep it secret.

Now, how you rationalize a coequal right in that regard I am not sure, Mr. Bennett.

Mr. BENNETT. Do you think that is the law at the present time?

Mr. PIKE. Yes. The executive branch does not think that that is the law. But I do.

Mr. BENNETT. When did the declassification occur in your committee?

Mr. PIKE. After we had removed from the report, after we had considered every objection which the executive branch raised to our report, removed those which appeared to have some rational basis, and voted to publish the report.

Mr. BENNETT. Drafts had been typed up before that, had they?

Mr. PIKE. Yes.

Mr. BENNETT. Were those drafts given the maximum classifications, and the materials that were in them?

Mr. PIKE. No, they were not given the maximum classification. There is no way, I think, that they could be given the maximum classification because the maximum classification under CIA rules is compartmented into little tiny areas, and our report had a great many areas in it.

Mr. BENNETT. Was the report stamped or did it have appear on it in any place, on every page, or on the front of it any classification?

Mr. PIKE. No.

Mr. BENNETT. Well then, it really is relatively unimportant that the CIA has little tiny breakdowns in types of classifications, is it not?

Mr. PIKE. Well, I don't know whether it is or not. It isn't to them.

Mr. BENNETT. Well, relative to the question I asked.

Mr. PIKE. Well, as far as our report is concerned, there was nothing in it which deserved that kind of classification.

Mr. BENNETT. Well, I asked if the paper you had that came out before you took the vote carried any classification on it at all? And your first reply was that there are little tiny breakdowns in the CIA and you get top secret, and super top secret and things like that, but that really doesn't relate to the question I asked you. I asked you whether it had any classification attributed by the committee?

Mr. PIKE. No.

Mr. BENNETT. In its draft form?

Mr. PIKE. No.

Mr. BENNETT. Isn't it reasonable to assume then if this paper found its way into the hands of a third party, or even to the member of the committee, that it was declassified before they voted to declassify it?

Mr. PIKE. Well, I don't think so. I believe, as I said earlier, that when it was distributed there was a letter of transmittal with it which said, I think, and now I am dealing from memory sometime back, that it was to be treated as an executive document, executive committee.

Mr. BENNETT. Does that letter exist?

Mr. PIKE. Yes, I am sure your investigators have that.

Mr. BENNETT. I would like to read it if I might. I presume the committee can furnish it.

Mr. BENNETT. Well, the paper itself, however, the draft itself, if it should fall in the hands of somebody other than the committee, didn't bear any classification on it at all, did it?

Mr. PIKE. No it did not. One of the problems, Mr. Bennett, that Congress has, is we haven't gotten any power to classify either. We don't have a classification power and this wasn't a document that the executive branch had written, this was a document Congress had written.

Mr. BENNETT. I think you have a good point there and I think you are being very helpful to the committee in pointing out our rules and regulations with regard to secrecy and classification need a thorough going into, and if this committee doesn't do anything else in its entire career but clear up this it will have done a good job for the country and your testimony is helpful.

Mr. FLYNT. If the gentleman from Florida will yield to me briefly, the Chair would just like to state that the Chair is of the opinion that the Constitution of the United States gives the Congress the authority and power and possibly duty to classify certain matters.

Mr. PIKE. Well, you may be right, but what is the mechanism? Do you classify it secret or top secret, do you use the executive branches? I believe we passed it out as an executive document.

Mr. FLYNT. The Chair is of the opinion that the Constitution is very clear, that the Congress has that authority.

Mr. PIKE. The Chair may well be correct.

Mr. FLYNT. Thank you, Mr. Bennett.

Mr. BENNETT. You testified that the committee could have recommended to the Congress that it receive the information in secret session. Did the committee do that?

Mr. PIKE. No.

Mr. BENNETT. Did it ever come up in the committee?

Mr. PIKE. I believe it did, yes.

Mr. BENNETT. Was it voted on?

Mr. PIKE. I don't recall, to tell you the honest truth, Mr. Bennett, but I don't think so. I just don't think there was that much support for it. Very frankly, the feeling when this particular discussion came up, was that if the full contents of the original document were given to the full House of Representatives in executive session, there might be a leak.

Mr. BENNETT. Well, if you thought the material was dangerous in the hands of the Congress as a whole, why don't you think it was dangerous in the hands of the press?

Mr. PIKE. Oh, I didn't say that. I didn't think it was dangerous. I didn't think the first draft was dangerous. I felt, although I did vote to remove certain things from it, I didn't—but what I am saying is I think that going into the House in Executive session is kind of a fiction, because as far as anything, this document or anything is concerned, I think when you tell 435 Members what is in it, there might be a leak.

Mr. BENNETT. There is one thing that you touched on a moment ago which I would like to address for just a second and that is the classification of documents prepared by Members of Congress or a committee of Congress and what classification they can bear, and you point out there is no specific statute or rule that you know of, and there is none I know of that has to do with that, but there certainly is a custom in Congress.

When you quote from a secret document that the document from which you quote, that is when you included material from a secret document, the whole document, if it's a book, has to be classified as secret, if it's classified as classified information it gets that classification.

Now, that is the way the House Armed Services Committee operates. It's cumbersome, but otherwise you have to really go into details of knowing all of the reasons why a thing was classified and why it wasn't, and most Members of Congress don't have that kind of time because things that appear to be nonessential or not requiring secrecy, may actually be such.

If you want to respond to that, it's fine.

Mr. PIKE. The only thing I was going to say is that is really precisely what we did. We took the time and we looked at every single substantive issue they had raised as far as its classification was concerned. And by and large we found that they were not meaningful.

Mr. BENNETT. Oh, but you didn't follow me. Because I said that if you take from a classified paper, and include it in another paper, according to the rules that I have always heard of, you have got to give the top classification to the final paper even though it may not, in fact, be a very detrimental thing to national security.

Mr. PIKE. Well, if we had done that, I don't think we could have filed a report.

Mr. BENNETT. I understand the reasoning of what you have said and I must conclude by saying I think this hearing has been very valuable and I think you are one of the most valuable Members of Congress and enjoyed serving with you on Armed Services Committee and you had a tough job, and you did it to the best of your ability, and I am grateful to you for coming here, because I think out of this we must have emphasized that, and you have as well, that there needs to be greater definition with regard to secrecy and classification.

It should not float around in outer space like it's floating. It's dangerous to the country to allow it to be so cavalierly handled, and I appreciate very much your testimony, and I thank you.

Mr. FLYNT. The gentleman from Michigan.

Mr. HUTCHINSON. Mr. Pike, did you or your committee have any understanding or agreement with the President or the executive branch in connection with the turning over to your committee of certain classified material?

Mr. PIKE. We had an agreement, yes, Mr. Hutchinson. But not as it pertained to our final report.

Mr. HUTCHINSON. What was the agreement?

Mr. PIKE. Our agreement was that there wouldn't be any interim disclosure of any information without discussing it with the agencies involved and the President, if we disagreed with the agencies then involved. In fact, we attempted to go that route during the course of our hearings on two different issues, and the President said these cannot be released and they were not released.

Mr. HUTCHINSON. According to the news reports, apparently the executive branch of Government viewed the understanding in a different light.

Mr. PIKE. I think that is a fair statement.

Mr. HUTCHINSON. And was that misunderstanding or lack of complete understanding, difference of understanding, was that apparent at any time in advance of the time the committee took action on its final report?

Mr. PIKE. No.

Mr. HUTCHINSON. Right up until that time?

Mr. PIKE. I don't think so.

Mr. HUTCHINSON. Thank you very much.

Mr. PIKE. It frankly did not occur to me that they would have the right to censor our final report. It occurred to me essentially that they have the right to comment on it, and make recommendations on it, and that is why we provided them with copies of it in advance.

Mr. HUTCHINSON. Thank you. That is all.

Mr. FLYNT. Mr. Hébert?

Mr. HÉBERT. No questions.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. Thank you, Mr. Chairman.

Mr. Pike, I would just like to ask some questions about the areas that you were involved with in questioning with Mr. Bennett on Members of Congress classifying or declassifying information. It is my understanding you feel that the Congress has the authority to declassify now?

Mr. PIKE. Yes.

Mr. QUIE. And a committee of the Congress, the committee being one who deals with that type of material.

Mr. PIKE. Having jurisdiction.

Mr. QUIE. Also would have power?

Mr. PIKE. I don't like the word declassify, but I would rather say make statements.

Mr. QUIE. Make statements.

Mr. PIKE. We didn't take any of their documents and just publish their documents. But we made statements which may have contained footnotes from their documents or something like that.

Mr. QUIE. So to make statements, the statements containing information that came from classified documents.

Mr. PIKE. Correct.

Mr. QUIE. And you feel that a committee should be able to do that as well?

Mr. PIKE. I think so.

Mr. QUIE. Do you think each individual member of a committee?

Mr. PIKE. No, no I do not.

Mr. QUIE. Then how do you feel that committee should be selected?

Mr. PIKE. I wish I knew.

Mr. QUIE. I agree with you that the Congress does have the power and should have the power, but I have a problem with a committee being selected without coming, its members coming before the House for a vote.

Mr. PIKE. I think that it should have a broad philosophical reputation, and I think that having said that it should have a broad philosophical reputation, it should not be so large, as I think Mr. Teague mentioned earlier, that leaks are inevitable, nor so small that it gets too cozy. I think it ought to have a limited tenure and I think most important, its staff ought to have a limited tenure.

Mr. QUIE. What about the question of whether those members should be subject to a vote of the House before they are appointed?

Mr. PIKE. I think that would be a good idea, just as we do with all of the other committees.

Mr. QUIE. The last question is what if—

Mr. PIKE. In instituting it I think the Speaker would have to set it up in consultation with the minority leader.

Mr. QUIE. That is my understanding of the way, for instance, your committee was established.

Mr. PIKE. That is correct.

Mr. QUIE. But we did not have an opportunity to vote as a body on the members.

If a member has made statements to the public or as we use it here leaked information on any subject that came from a document that was classified, and thereby, in effect, declassified the information, do you think that that member should be able to serve on a committee whose jurisdiction it is to work with classified information?

Mr. PIKE. I wouldn't black or white that. I would look at the individual situation, what, in fact, was said, in what context. In general my inclination is no, but I wouldn't put an absolute prohibition on it without looking at the facts.

If I were the Speaker or the minority leader, I would probably be pretty slow to recommend such an amendment.

Mr. QUILLEN. Would the gentleman yield?

Mr. PIKE. Yes.

Mr. QUILLEN. The constitution of your committee was drawn from each party?

Mr. PIKE. Nine and four.

Mr. QUILLEN. The vote then in releasing the report was a partisan vote.

Mr. PIKE. No. It was eight of the nine Democrats and one of the four Republicans.

Mr. QUILLEN. Well, would you gentlemen, say like this committee, we are nonpartisan, evenly divided, would you say then that a select committee should be, investigative committee, should be likewise constituted?

Mr. PIKE. No, I don't think so. I think it ought to represent the House as a whole.

Mr. QUILLEN. That is all, Mr. Chairman.

Mr. FLYNT. Thank you.

Mr. FOLEY. Mr. Chairman?

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. Just a small housekeeping matter. I wonder when there is no photography taking place if we could have the lights turned on or shut off? I realize it's difficult during most of the session to determine when photographers want to take pictures, but there hasn't been any filming done in some time and these are very harsh to look into.

Mr. FLYNT. We already are making arrangements.

Mr. FOLEY. Thank you, sir.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. FOLEY. I was the one who offered the motion to have this opened for photography, but in most committees there is some adjustment made, you know—and I think if some of the photographers had to sit behind that tree of lights for an hour or two, they would agree—some of the members have been wearing dark glasses to avoid the glare and we ought to have some possibility of adjustment on this.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. PIKE, on page 11 of Mr. Bowers' report I would just like to read you a couple of sentences, and see if you feel this is an accurate characterization of the method of distribution of your report.

Mr. Bowers says:

It was extremely disorganized, it was so disorganized that those in charge could not recall who made the deliveries to which offices, or the time they were made. There was no specific control system, copies of the draft contained no identification whatsoever. They were not numbered nor were they charged out so they could be accounted for.

Is that accurate?

Mr. PIKE. This is Mr. Bowers quoting somebody else?

Mr. MITCHELL. Yes, this is in Mr. Bowers' report.

Mr. PIKE. Can you tell me who Mr. Bowers is quoting?

Mr. MITCHELL. There is no one quoted. In the words of one staff person involved.

Mr. PIKE. No, I don't think I would characterize it that way. I don't think I would agree with that staff person.

Mr. MITCHELL. That was not an accurate characterization of the method of distribution?

Mr. PIKE. I don't think I would agree with the statement.

Mr. MITCHELL. Were the documents numbered then?

Mr. PIKE. I don't think they were numbered, no.

Mr. MITCHELL. Was there a specific control system?

Mr. PIKE. Well, Mr. Mitchell, as I testified earlier, I was not distributing the documents, and I don't recall the exact procedure, but I think there was a control system, yes.

Mr. MITCHELL. You mentioned, Mr. Pike, that you held up a report from CIA and you mentioned that those were items that they requested be deleted from your report. Can you quantify your explanation as to how much of those items, how many of those items, were deleted from the report or how many remained in the report?

Mr. PIKE. I cannot. Let's put it this way: I would say that after we pointed out to them that many of the things they wanted deleted had already been published somewhere else, they would back off their objections. I would say we got down to real arguments about a minority of the things in there.

Mr. MITCHELL. Maybe a dozen?

Mr. PIKE. No, there would be more than a dozen. We spent the week of January 19 through 23 discussing specific issues of that kind.

Mr. MITCHELL. With the CIA?

Mr. PIKE. Not with the CIA, but the CIA had its spokesman on the committee who raised those objections to our report that the CIA wanted raised. The staff continued to discuss these things with the CIA.

Mr. QUIE. Would the gentleman yield?

Mr. MITCHELL. Yes.

Mr. QUIE. What do you mean by the CIA had a spokesman?

Mr. PIKE. There was a member of our committee whom we agreed—there was nothing sinister about this—who was interested in presenting the CIA's objections, and who we agreed would be given an opportunity to present the CIA's objections, and did so. He didn't present all of them, he just even agreed that some of them were meaningless.

Mr. MITCHELL. You mentioned, Mr. Pike, that you didn't know where the leaks came from as they occurred. As they did occur, what steps did you take as chairman or did your committee take as a committee, to prevent the leaks? Did you investigate them?

Mr. PIKE. No. There was no way that we could investigate a leak not knowing, not having any idea, whether it came from our committee or from the CIA itself.

Mr. MITCHELL. Well, did you make any effort at all to see where it came from? Did you talk to or interview your members or discuss it?

Mr. PIKE. Did I interview all of the members? No, I did not.

Mr. MITCHELL. Did anyone, was there any effort at all made, to determine where the leaks came from?

Mr. PIKE. In the staff I discussed it. And asked very hard questions about who had access to what. But I did not find who leaked anything.

Mr. MITCHELL. With this agreement, that all your staff were supposed to have signed, that they would not release any information to unauthorized persons until the committee agreed, there is also a penalty that "Failure to abide by any of the foregoing will subject me to immediate termination of my employment with the committee."

With all the leaks and with all your questions of all your staff, did anyone lose their jobs in connection with your investigation?

Mr. PIKE. People lost their jobs, but not in connection with leaks.

Mr. MITCHELL. Thank you.

Mr. FLYNT. Mr. Cochran.

Mr. COCHRAN. Mr. Chairman, in following up what Mr. Mitchell has brought out, there was some indication that back in December of 1975 an incident occurred where some members of your staff invited newsmen to come in and they were given a briefing on the status of the investigation of the CIA's purchase of electronic recording devices from the U.S. Recording Co. And opportunities were also given, it was said, to the newsmen to review transcripts of interviews the staff had conducted with witnesses relating to that same subject matter.

Do you recall such an incident occurring? It was allegedly on New Year's Eve, in 1975.

Mr. PIKE. I believe I was not here, being in recess. I feel very sure that I was not part of that briefing. On the other hand, I do not want to say that I believe that the staff was wrong in doing it. I think that at that time—we had our testimony from U.S. Recording, as I recall, in open session. There was nothing classified about it. As I recall that situation, a witness indicated that somebody in the FBI was tacking additional money onto equipment bought from them for no purpose, no visible purpose. And this witness, as I recall, felt subsequently that he had been threatened by the FBI. And there was some question, I believe, as to the nature of his testimony. The FBI said he had recanted his testimony. He said, "No, I didn't, they came around and put the arm on me, and I still mean such and such, and so and so." And I think it may well have been just a question of clearing up testimony which had previously been given in open session. I am not sure of that. But I do remember we heard testimony from U.S. Recording in open session.

Mr. FLYNT. I wonder if the gentleman would yield to me very briefly at that point.

Mr. COCHRAN. Yes. Mr. Chairman.

Mr. FLYNT. Mr. Pike, isn't it a fact that the information which was released on New Year's Eve consisted of the contents of an interview which had not even been discussed in public session.

Mr. PIKE. I do not know the answer. I was not present, and I don't know what if any—I have no evidence that any information was released on New Year's Eve.

Mr. FLYNT. If we will supply you a copy of that interview, would you respond to that question for the record?

Mr. PIKE. Certainly. I do not know—you would have to supply me not only the interview, but also what was released, because I just don't know.

Mr. FLYNT. The reason I asked the member from Mississippi to yield to me to interpose this question is that the information available

to the committee is that there was information released on New Year's Eve which had not been discussed in public session. And we will supply it to you and let you respond to it.

Thank you for yielding.

Mr. COCHRAN. Yes, sir, Mr. Chairman.

I understand from your testimony about the incident that you were satisfied that nothing improper was done there.

Mr. PIKE. I don't know, because I wasn't there, and I don't know what was done.

Mr. COCHRAN. Well, assuming that you thereafter learned that such an incident did occur, I presume as chairman of the committee you were interested to know whether or not anything improper did in fact occur then?

Mr. PIKE. I am indeed interested.

Mr. COCHRAN. Now—

Mr. PIKE. But I did not learn about it until my tenure as chairman had expired.

Mr. COCHRAN. I see. You know, the difficulty as I see it, Mr. Chairman, is not really a difference in philosophy between whether the Congress is a coequal partner with the executive in trying to establish classification procedures and policies, but whether or not the Congress really, as it is established through committees, referred to by Mr. Teague, and by Chairman Pike, is able, in view of the way they are established, and the manner in which they operate in dealing with the media as they commonly and ordinarily do, to maintain a secret of a piece of subject matter which is legitimately classified. I know that the chairman brought out through his testimony the difficulties encountered in trying to deal with the executive branch over what kind of documents you could obtain, what you were able to do with them, the procedures on copying and the like. And we all read about this confrontation in the media during the time it was all going on.

Sometimes I felt sympathetic toward you and other times I probably did not.

I think the difficulty was whether there was evidence of our being able to place trust and faith in a committee that was established and operating in such a way that raised some doubts about whether we could maintain secrecy of legitimately classified information that might be given to the committee. And I think this is what Mr. Teague was alluding to. What do we do now, if we are going to have Congress being a coequal partner—what do we do in order to safeguard that, and to gain and earn the trust and confidence of the American people in a system like that? I am not sure we are going to be able to come up with the answer to it. But I would be curious to know whether you really think, based on your experience with this committee, that we can earn, as a Congress, as a committee, the trust and respect of the country in placing in a committee or in the institution faith that it will be able to safeguard legitimately classified information.

Mr. PIKE. Well, of course, Mr. Cochran, I agree with you up to a point.

The question is—well, there are a couple of questions.

The first, who decides what is legitimately classified? The key word is "legitimately." And I think that Congress, as the representative of

the people, through its Members, has as great a right to tell the people the truth as the executive branch has the right to keep secrets.

Now, starting with that premise, I do not know whether you have read our report or not, but I think that if you read it, you wouldn't find any legitimate secrets in it. And I think that it might help restore your faith in the Congress.

Mr. COCHRAN. What bothers me, though, I think, more than anything that may or may not be in the report, are the procedures that we understand may have existed with respect to the handling of documents that your committee received. We understand there were some 75,000 classified documents that were given to the committee, or over which you exercised some control, and that a member of the committee staff could go into the xerox area, and actually make a copy of one of those documents without signing a log that he had copied it, or that she had copied it, and then do whatever he or she might want to with that document, without there being any accounting for it. This, if it is true, is disturbing. It sounds as if the procedures that were followed in particularly the duplicating of documents and materials by the committee staff were not conducive to keeping a secret if it were legitimately classified and within the control and jurisdiction of the committee.

Mr. PIKE. I share your concern to some degree. But don't you find that equally if not more disturbing, this little old committee that only existed for that little bitty length of time should find, in just asking about a few issues, that it had 75,000 classified documents?

Mr. COCHRAN. I think that is a very good observation. There may have been many of those documents that probably were not legitimately classified. But I would not know which ones were or were not without any background in foreign espionage or the like, or whatever the subject matters were.

Mr. PIKE. I would be more inclined to trust your judgment on it than the first lieutenant who stamped it.

Mr. COCHRAN. Well, maybe so. And that is a good point to raise. And I think that is why I share your view that Congress may be out to be a coequal partner in the establishment of the policies and procedures for classification. But that does not really respond to the question about how the committee handled whatever documents might have been legitimately classified that you and I would agree should have been kept secret.

Mr. PIKE. Let me say this: When we talk about our report which got published, we are talking about a document which was created by our committee and was not in my judgment classified.

When we talk about documents, it is a wholly different matter—I agree with you.

I think we handled our documents pretty bloody well. I think that the business of getting all of these documents, getting them back to them, getting them in the Archives, without the leak of documents, was a pretty good undertaking.

Now, there have been two allegations that I am aware of that documents were missing. One of them I tracked down very hard, made a speech on the floor about it, on March 9, and the documents just were not missing. The other one I have not the resources to track down in any manner, and I simply do not know.

But as far as documents are concerned, we tried pretty hard and I think we had a pretty good system. When we went out to the CIA, after they alleged that some of our documents were missing, they were there. Our bookkeeping indexes and entries were better than theirs were.

Mr. COCHRAN. But you know it is only left to surmise for all of us as to whether or not copies were made of documents through the apparently very loose control over the duplicating procedures, and whether or not there are documents that are legitimately classified that are somewhere in this town, or in someone's office, or wherever, that we don't know about. We just simply have to suppose that there were no documents copied and misdistributed.

Mr. PIKE. I will concede that it is possible. You either trust your staff or you don't. You are talking about staff. You are not talking about outsiders.

Mr. COCHRAN. That is particularly the reference I make, as to staff, and whether or not under the procedures that were instituted by this committee, that would serve as a guide for handling secret and classified documents in the future or whether or not the committee, in the scope of this investigation, ought to try to come up with a set of recommended procedures for handling classified documents. If that is a relevant consideration—I think it is to the committee—since we were requested to investigate the circumstances surrounding the publication of a document, arguably, of course, the report, in the Village Voice, and to make recommendations to the House concerning what steps might be taken to prevent such things from happening in the future, that might be included.

But I have taken too much time.

Thank you, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Cochran.

Mr. Pike, there are two questions which the committee would like to address to you if the committee votes to go into executive session.

I recognize Mr. Spence.

Mr. SPENCE. Mr. Chairman, I move, in accordance with House Rule XI 2(k) (5), that we go into executive session at this time.

Mr. FLYNT. This is a motion which under the Rules of the House must be made in public session. And the vote thereon must be taken by rollcall, a quorum being present. The staff director will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

[No response.]

Mr. SWANNER. Mr. Quillen.

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert.

Mr. HÉBERT. Aye.

Mr. SWANNER. Mr. Quie.

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley.

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell.

[No response.]

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, nine members vote aye, there members absent, not voting.

Mr. FLYNT. On this vote, recorded vote, the ayes are nine, the nays are none, three members not voting.

A quorum being present, the vote being nine in the affirmative, none in the negative, two not voting, the committee goes into executive session at this time.

[Whereupon the committee proceeded in executive session, at 4:50 o'clock p.m.]

Mr. FLYNT. The committee will be in order.

Do I hear a motion that the committee adjourn until 10 o'clock tomorrow morning?

Mr. FOLEY. Mr. Chairman, I move the committee now adjourn until 10 o'clock tomorrow morning.

Mr. FLYNT. You have heard the motion. As many as are in favor, say "aye."

[Chorus of "ayes".]

Opposed, "no".

[No response.]

The "ayes" have it.

The committee stands adjourned until 10 o'clock tomorrow morning.

[Whereupon at 6:40 p.m. the committee adjourned to reconvene at 10 a.m., Tuesday, July 20, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

TUESDAY, JULY 20, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Teague, Hébert, Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe; Andrew Whalen; Jan Loughry, committee staff; Robert Carr, associate counsel.

Mr. FLYNT. For the purposes of taking testimony and receiving evidence, a quorum is present.

Our first witness today before the committee is our colleague from Texas, Hon. Dale Milford.

Congressman Milford, we are pleased to have you appear before this committee and we welcome you to the committee room and committee hearing.

Would you rise with me and let me administer the oath?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. MILFORD. I do, Mr. Chairman.

Mr. FLYNT. You may be seated.

TESTIMONY OF HON. DALE MILFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. FLYNT. Congressman Milford, I understand that you have a prepared statement that you would like to read into the record or present into the record before being questioned; is that correct?

Mr. MILFORD. I have, first of all, my statement that I would like to read.

I would request permission to also insert for the record more detail and some back-up data on the summary that I will present to the committee.

Mr. FLYNT. Without objection your request is granted.

Mr. MILFORD. Mr. Chairman, I sincerely appreciate that.

(61)

75-491-76-5

[The material referred to above appears at the end of Mr. Milford's oral testimony.]

Mr. FLYNT. Before you begin, let me further identify you.

You are Congressman Dale Milford of Texas.

Mr. MILFORD. From the 24th District of Texas, Mr. Chairman.

Mr. FLYNT. The 24th District and you were a member of the House Select Committee on Intelligence.

Mr. MILFORD. That is correct, sir.

Mr. Chairman, I sincerely appreciate this committee's courtesy and interest in allowing me to testify in these very important hearings.

As a former member of the Select Committee on Intelligence, I am vitally interested in the matter before you. The "leaks" of classified information can be very damaging to our national security and this Nation's welfare.

The unauthorized release of the entire confidential report, produced by the Select Committee on Intelligence, leaves a cloud on each member and staff member of that committee. Like the vast majority of my committee colleagues and our responsible staff members, we would like the guilty party discovered so that the rest of our names may be cleared.

In order to save this committee's time, I would like to only summarize my testimony in this oral presentation and in addition to the request you allowed me to make, Mr. Chairman, I would further request that I be permitted to submit for the record additional arguments and documentation and opinions that will be forthcoming at a later date before your record closes.

Mr. FLYNT. Yes, sir, they will be received without objection.

Mr. MILFORD. However, I would ask unanimous consent to submit—for the record—supporting documentation and papers that will justify and confirm the summaries that I shall present in oral testimony.

From my personal knowledge, I do not know whether this data was deliberately released through overt violations of house rules, or whether it was done because of sloppy and careless committee staff procedures. In either case, the real cause must be determined, the person or persons responsible must be identified, and corrective action must be taken.

Mr. Chairman, I do not think that either this committee or the entire House can really get to the bottom of the issue before us without first honestly and squarely facing a highly sensitive peripheral issue that is clouding this investigation.

We are concerned with finding out which Member or staff member of this House violated House rules in the events surrounding the unauthorized release of the text of the report of the Select Committee on Intelligence.

Mr. Daniel Schorr, CBS News reporter, has admitted that he obtained a copy of the House Select Committee on Intelligence Report. After broadcasting portions of it on CBS News, Mr. Schorr then admitted causing major sections of the report to be published in the Village Voice, a New York newspaper.

Mr. Chairman, we are not concerned with what Mr. Schorr did with the report after he received a copy of it.

Mr. Schorr has violated no law in obtaining and causing the report to be published. As far as I can determine, he or any other American

citizen may seek out any report or data from the House of Representatives—whether confidential or not—and could promptly publish it without any type of violation of law.

Clearly then, the only law violations that we should be concerned with would be those committed by Members or staff members of the House of Representatives.

Mr. Chairman, the next step for your committee to take appears to me to be obvious. Since Mr. Schorr obtained a copy, he must be invited or subpoenaed to testify before your committee to determine where and how he obtained the report.

If Mr. Schorr answers these questions, the committee will have finished its work and can so report to the House.

Even if he does not answer the questions, I do not see how this committee can report back to the House without having asked them.

Personally, I would like to see Mr. Schorr brought before this committee by invitation—or subpoena, if necessary—and questioned about his knowledge of the person or persons responsible for the violation of House rules that placed the report in Mr. Schorr's hands.

From the homework I have done—and I'll admit that I am not a lawyer—I would submit that Mr. Schorr would have to answer such questions.

Under title 2, section 192, of the United States Code (refusal of witness to testify), and the Supreme Court decision in *Branzburg v. Hayes et al*, Mr. Schorr would have no legal recourse but to reply. That, however, is a personal opinion.

Mr. Chairman, I am not real sure that your committee will have a great deal of success in either obtaining cooperation from Mr. Schorr or in determining "the leaker" from other sources. However, there is one great service that this committee could render the entire House. That would be to recommend corrections to the basic factors that present a situation where security leaks are possible.

You have heard arguments about Congress being a coequal branch. I join Chairman Pike in believing that it should be. You have heard arguments that Congress should share and monitor all intelligence operations and have access to all security information. Again, I agree with Chairman Pike in believing that we should. You have heard arguments that Congress should be able to declassify security information. I also agree with this proposition.

However, there are several other important factors that must also be faced along with these congressional powers. Congress must also be responsible. Congress must establish rules and procedures that will protect vital security information. Declassification must only be done after careful and knowledgeable consideration—then only to thwart administration abuse of our security laws.

Mr. Chairman, under present House rules and committee structures, it is virtually impossible for Congress to protect responsibly highly classified security information.

For example, House Rule XI (2) (e) (2), clearly gives any Member of Congress the undisputed right to examine any file, in any committee in the House.

Further, absolutely nothing would keep that Member from either leaking the data or simply walking to the floor of the House and reading the information to the world.

Let's take intelligence data as another example. Intelligence secrets are our most sensitive governmental matters. There are six different committees in Congress that have jurisdiction over intelligence matters. Several other committees with peripheral jurisdictions, such as Government Operations, may also become involved with intelligence activities.

The ability to maintain a secret is directly proportional to the number of people who know that secret. As a practical matter, under present House rules and committee structures, classified data simply cannot be protected.

In order to correct this situation, I have introduced House Resolution 1095. It is a measure that would amend several House rules in order to protect security data.

I would first recommend that rule XI(2)(e)(2) be changed. The rule should be amended to permit Member access to classified data only on a strict "need to know" basis.

Second, I would recommend that a permanent Intelligence Committee be established and that it be given jurisdiction over all intelligence matters. This action would reduce the number of people who would have possession of our most sensitive information.

My second recommendation will only work if the committee is very carefully selected. Every member of that permanent Intelligence Committee must clearly hold the respect and confidence of a majority of the entire membership of the House.

In addition to the confidence factor, there are also some important technical factors that must be considered in the committee makeup. Almost everyone, including many Members of Congress think of our intelligence agencies as James Bond operations, full of spies conducting cloak and dagger activities all over the world.

In reality, our intelligence community presently employs more economists and agriculturists than the total number of spies that have been employed throughout our entire 200-year history of our Nation.

Therefore, the personal and technical expertise of the individual members of a permanent Intelligence Committee is extremely important. A broad spectrum, encompassing many disciplines, must be understood and dealt with by that committee.

Further, there is a vital need for a gross pollination of information between the permanent Intelligence Committee and other committees of Congress.

For example, the Armed Services Committee and the International Relations Committee must have a close liaison with intelligence activities.

There is also a limited need to know on the part of the Government Operations Committee, Science and Technology, Agriculture, Judiciary, Banking and Currency, and others.

Mr. Chairman, both the "cross pollination" of information and the needed technical makeup can be solved in the selection process of members to serve on the permanent Intelligence Committee.

I would propose that in lieu of the usual Committee on Committees selection of the 11 members to serve on this committee, it be selected in the following manner:

The Speaker would nominate the chairman.

The Armed Services Committee would nominate two members.

The Committee on International Relations would nominate two members.

And one member each would be nominated by Science and Technology, Banking and Currency, Judiciary, Public Works and Transportation, Government Operations, and Interstate and Foreign Commerce.

The House leadership would designate the party ratio with not less than one-third of the members coming from each major party.

Mr. Chairman, there is one other problem that must be faced. I hope that your committee will face it and make recommendations to the full House. As Chairman Pike pointed out in his testimony, he and other members of the Select Committee on Intelligence were very concerned about administration agency abuses of our classification system.

From my own knowledge, I believe that our classification system is occasionally abused. We saw evidence of misuse of the secrecy stamp in order to cover up illegal and inefficient activities.

While I agree with my former chairman that our security system is sometimes abused, I do not concur with his recommendation that congressional committees should have the power to unilaterally declassify information over administration objections.

I do believe that Congress has—and should use—the power to oversee intelligence activities and to declassify information or data that has been improperly classified. However, this must be done in a very careful and responsible manner.

To solve this problem, I have proposed in House Resolution 1095 that a "leadership committee" be formed, consisting of the following: The Speaker, the majority and minority leaders, and the chairman or ranking majority member of the committees from which the Intelligence Committee members are selected—party ratios to be approximately the same as on the Intelligence Committee.

Under proposed House rules changes, no member or committee could unilaterally release classified data without the concurrence of the appropriate administrative agency.

If an individual member should possess classified data that he believed should be made public, he would be required to appear before the appropriate committee of jurisdiction and present his case. If the committee of jurisdiction and/or the responsible administrative agency would not agree to make the data public, the individual member or the committee could appeal to the Leadership Committee for a hearing.

The Leadership Committee would be the "court of last resort" and would be empowered to declassify information. This system would serve as a responsible check and balance. At the same time, every Member of Commerce would have a forum to present his case when he believed classification abuses had occurred.

Mr. Chairman, I shall include in the record more details on the proposal that I have offered along with a copy of House Resolution 1095.

I will be glad to answer any questions that you or your committee might have.

[The proposal referred to appears at the end of Mr. Milford's oral testimony.]

Mr. FLYNT. Let me first thank you, Mr. Milford, for your appearance before our committee and for your contribution to our hearing, and I

would also like to say that we are grateful to you and we find it rather refreshing that you make your approach to the problem by making specific recommendations which this committee and/or the other committees in the future may well take under consideration.

I would like, for the record, to correct a statement that I made earlier when I received your supporting documentation and other remarks that you had previously made, which appeared in the Congressional Record.

Let me say we will receive those and the committee will make a determination after consultation with you as to which documents and how many will be included in the printed record. But they will be received by the committee.

Mr. MILFORD. Fine, sir.

Mr. FLYNT. Before turning to counsel for his questions, I would like to turn to pages 6 and 11 of your prepared statement and I think following page 11 you clarified these two statements.

I think on page 6 you made the statement: "You have heard arguments that Congress should be able to declassify security information," and that you also agree with this proposition.

Mr. MILFORD. Yes.

Mr. FLYNT. Then on page 11 I think you said that a congressional committee should not have the power to unilaterally declassify.

Mr. MILFORD. I mean our routine committees, any single committee. There needs to be an approval of the committee plus a check system.

There is a three-way check involved here, Mr. Chairman. First, there is the consultation with the administration because in many instances the committee sitting down with the administration can agree to declassify, if either one objects, it goes to the Leadership Committee, which is a court of last resort. In other words, you are getting two reviews always.

Mr. FLYNT. Now, would you give to either House of Congress the right to declassify or would you require the concurrent action of a super committee such as you have described in your statement of both Houses working concurrently?

Mr. MILFORD. As a practical matter, I doubt seriously if we could come up with a super committee mechanism. I would feel comfortable, quite frankly, if responsible members of our leadership were reviewing it, particularly after hearing arguments from the administration.

Mr. FLYNT. I raise that question because in your statement you indicate that you think that Congress should have the authority to do it.

Mr. MILFORD. Either House.

Mr. FLYNT. And yet the clarification you have given indicates you think the House of Representatives should have that authority; right?

Mr. MILFORD. Right.

Mr. FLYNT. Now, do you think the other body should likewise have that authority to act unilaterally?

Mr. MILFORD. Yes; I do, Mr. Chairman.

Mr. FLYNT. What would be the objection of the suggestion of concurrent action of the two?

Mr. MILFORD. I would have no objection to it myself. I simply want a responsible mechanism of reviewing all details, and by having it checked by a second party such as the Leadership Committee.

Mr. FLYNT. You are aware, I am sure, of the gradual downgrading of classified material.

Mr. MILFORD. Yes.

Mr. FLYNT. Without going into specific instances, we will say something is classified top secret. At the end of 6 years it will automatically be downgraded to secret. At the end of 9 years it will be automatically downgraded to confidential. At the end of 12 years it will be automatically downgraded to restricted, and eventually totally declassified.

Mr. MILFORD. Yes.

Mr. FLYNT. And yet, frequently on these documents we find another stamp which reads that this document is exempt from the normal and automatic declassification process. Are you aware of that?

Mr. MILFORD. Yes; I am.

Mr. FLYNT. Would you address yourself to that system?

Mr. MILFORD. I think we need to. This would be something a permanent Intelligence Committee could tackle. We need to review our entire classification systems. And furthermore, it needs to be monitored and checked by constant oversight.

As I stated in my testimony, there have been abuses of our classification system. I have personal knowledge of some of these abuses.

Mr. FLYNT. Our present classification system has often been likened to an "Alice in Wonderland" situation where when everything becomes classified then nothing is classified anymore. Would you sort of agree with that statement?

Mr. MILFORD. It has some merit, Mr. Chairman. As I stated, it's an area that needs to be looked at and it needs to be looked at promptly.

Mr. FLYNT. Would you agree that the entire classification system is damaged by overclassification of documents and frequently by classification of documents which have never and never should have been in any classified category.

Mr. MILFORD. Yes; I would, Mr. Chairman. The integrity of the system is very, very important, and if we have a tendency to slap a stamp on immaterial matters, you break down the integrity of the system.

Mr. FLYNT. Would you agree that substantial damage is done to the system by the ability of an almost unlimited number of people to stamp a document classified?

Mr. MILFORD. Yes, Mr. Chairman.

Mr. FLYNT. How would you go about correcting that?

Mr. MILFORD. First, as I stated, we need to do a top-to-bottom overhaul of our classification regulations which, incidentally, are done by Executive order.

There are no laws enacted by Congress, no guidelines laid down by Congress about classifying documents or items. This, to me, would be an appropriate first order of business for an intelligence committee. Congress should lay down specific guidelines about what may be classified and who may do the classifying, as opposed to leaving it to the administration totally.

Mr. FLYNT. Would it be a fair characterization of the present system of classification to say that it's almost comparable to an unsystem, where it is in the nature of a request of people not to violate the security classification?

Mr. MILFORD. In many instances, yes.

Mr. FLYNT. And that except for espionage statutes and certain related statutes regarding cryptographical information, would you say that the entire classification system of the United States is based on administrative executive order?

Mr. MILFORD. It is indeed, and it controls only the person who possesses the information.

Mr. FLYNT. And in many instances would not control persons who might surreptitiously or otherwise gain control of it.

Mr. MILFORD. That is true. That is why I say a Member of Congress can leak anything he wants if he gains possession of it, and violates no law.

Mr. FLYNT. And be subject only to discipline of the House.

Mr. MILFORD. In many instances he is not even subject to that, Mr. Chairman, if he is able to obtain it without violating a committee rule or something of this nature.

Then he can simply release it. Call a press conference and release it if he wants and violate nothing.

Mr. FLYNT. Counsel?

Mr. MARSHALL. Mr. Milford, you are appearing here at the invitation of the committee, is that correct, sir?

Mr. MILFORD. That is correct, Mr. Marshall.

Mr. MARSHALL. You have been requested to bring with you any documents in your possession concerning the select committee's operation. Do you have any such documents?

Mr. MILFORD. I have already returned everything I had to the committee staff investigators when they called on me.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data which was received in the executive session of the Select Committee on Intelligence or classified information, or information which would tend to defame, degrade, or incriminate anyone, the committee would appreciate your advising the committee in a timely fashion so it may take appropriate action under the rules of the House of Representatives.

Mr. MILFORD. Yes, sir.

Mr. FLYNT. Mr. Milford, I am sure you understand the full importance of what counsel just said.

Mr. MILFORD. Yes.

Mr. FLYNT. Let me clarify it. In the event at any point the question from counsel or any member of the committee would produce an answer which you feel should be given in executive session, if you will so advise the committee we will be grateful.

Mr. MILFORD. I will, Mr. Chairman.

Mr. MARSHALL. Mr. Milford, during the time that you served as a member of the Select Committee on Intelligence, were the security procedures and regulations which were adopted by that committee followed?

Mr. MILFORD. Were they what, sir?

Mr. MARSHALL. Were they followed, the security rules and regulations adopted by the committee followed?

Mr. MILFORD. I don't think they were. I was concerned, along with one other member, about the way documents were handled, and the procedures that were followed during the course of the committee's investigations.

Going back to my own military service, we had a very strict discipline about handling security documents. I felt that a similar discipline should be followed by the committee staff and committee members. I was somewhat concerned when I would see classified documents lay, for example, on the committee desk with cameramen going around with cameras where it would be very easy to photograph a page.

I was concerned due to a lack of a numbering and accounting system of documents, and I was also concerned by my observations of the way documents were handled within the staff room.

Mr. MARSHALL. You mentioned classified documents on desks where cameramen going around might have the opportunity to photograph them. What cameramen were they?

Mr. MILFORD. Press cameramen.

Mr. MARSHALL. Press cameramen?

Mr. MILFORD. Yes.

Mr. MARSHALL. Now, as I understand it, the committee spaces had some security; that is, a policeman with a log for persons to sign in and out of the committee space. Is that correct?

Mr. MILFORD. Yes, that is correct.

Mr. MARSHALL. Were these cameramen you referred to inside of that secured area?

Mr. MILFORD. I have never seen any cameramen inside of the security. What I was specifically referring to was occasions when we would be holding sessions. We would have a red book, notebook, loose-leaf binder which would contain classified documents pertaining to the matters that we were discussing.

We would refer to them as witnesses would testify, or as we would question them, and quite often some of these would be left open. During breaks, and even during testimony, you would have press cameramen who would be circulating about the room as they have been doing here today. It's a rather simple matter to photograph a document which then could be read when the film is developed.

Mr. MARSHALL. You mentioned the absence of a numbering system. Are you referring to a numbering system, for example, for distribution of drafts of the committee reports as those drafts were made and then changed from time to time?

Mr. MILFORD. That is one example. In my mind, if you are dealing with classified documents, every document must bear a registration number. That is how you account for each document. That is how you can tell if it's copied because to copy the document you would have to copy the registration number. This is a routine way of accounting for security documents. It's done by all of our agencies in the administration that handled security documents. If you go to CIA and you take a document out, it's going to bear an identification number.

Mr. MARSHALL. Let me ask you specifically about the draft of January 19, 1976, of the select committee which I understand to be the first formal and attempted complete draft.

Was there any numbering system for that draft, to your knowledge?

Mr. MILFORD. No.

Mr. MARSHALL. Did the copy that you obtained of that draft have a number or cover letter indicating that it was subject to some control?

Mr. MILFORD. I am not real sure. I seem to recall that either a letter came with the report, or preceded it, or followed it; stating that the

committee had not approved the report, that it was a draft, and as such the contents should not be revealed.

Again, my impression was that it had to do more with House rules as would apply to any committee or any report draft, as opposed to security information. There was no mention of the fact that the draft also contained then highly classified information.

Mr. MARSHALL. Now, in the testimony yesterday Mr. Pike made the point, as I recall his testimony, that during the course of the select committee's activities that no secret documents were leaked, despite the obvious leaks that were reported concerning security information.

I don't quite understand, and if you can elaborate on this I think it would be helpful to the committee, the distinction between a secret document and the information in that document, if, in fact, the January 19 draft contained secret information, is there any valid distinction, in your judgment, between the secret information in that draft and the secret document from whence it came if they both say the same thing?

Mr. MILFORD. So far as whether someone actually got that piece of paper out of the committee room, I don't really know. I do know that the contents of several highly classified pieces of paper got out. And whether you get the actual piece of paper, I think, is really moot. It's immaterial. If you get what is on that piece of paper, and if that information is damaging to either our national security or national welfare, I think it is tragic.

Mr. MARSHALL. All right, let's translate that into the specific drafts of the January 19 draft, for example. Was there information in the January 19, 1976 draft of the Select Committee which was gained from secret documents and which was, in fact, itself secret, that is, the information secret?

Mr. MILFORD. Not only secret but some information was top secret.

May I elaborate on something?

Mr. MARSHALL. Yes, sir, if you would.

Mr. MILFORD. Since I have heard this report discussed and I don't think many people really realize the damage that was done by the leaking of that report—

Mr. MARSHALL. When you say report, are you referring to the January 19 draft or the January 23 draft?

Mr. MILFORD. I am referring to the one that was printed in the New York newspaper.

Mr. MARSHALL. In the Village Voice?

Mr. MILFORD. Yes, and I am not sure what draft that was. I was hoping that this committee might find out specifically which draft was printed.

Mr. MARSHALL. We are proceeding to attempt to do that right now.

Mr. MILFORD. There is a point that I don't think has been made. As many people have stated: "I read that and it didn't tell me anything; I don't see where it was all that important."

First, all of the real juicy stuff had already leaked out prior to the publication of the whole report. But the point that was overlooked entirely by the Select Committee staff, and a good number of the members was this: That report contained bits and pieces of highly classified technical data that the average person wouldn't even recognize. How-

ever, an adversary intelligence analyst would find the report to be a virtual bonanza.

Mr. FLYNT. Excuse me for interrupting, but would you include the word "trained intelligence operator"?

Mr. MILFORD. In other words, a trained analyst would find that report to be a bonanza. He would not take what the report itself said, but he could take these bits and pieces, tie them to other information that he would have and garner a picture of activities that isn't even mentioned in that intelligence report.

Mr. MARSHALL. Somewhat like the piece of the puzzle that is meaningless in itself, but when put in its place completes the whole scenario.

Mr. MILFORD. Right, this is the damaging factor in the leak of that report. It wasn't anything that the report itself said, but there were footnote references, there were other bits and pieces that seriously comprised ongoing intelligence activities.

Mr. FLYNT. Mr. Milford, isn't it a fact that most intelligence information is accumulated in that way?

Mr. MILFORD. Certainly.

Mr. FLYNT. That it is very rare, indeed it may never happen that you have everything made available to an intelligence gatherer or intelligence gathering agency in one piece. It is by the process of collecting, evaluating and putting together the many small pieces of intelligence that the big picture eventually evolves.

Mr. MILFORD. You are absolutely right, Mr. Chairman.

Mr. MARSHALL. Mr. Milford, did you consider that the staff of the Select Committee had sufficient expertise and experience in dealing with security information to protect them?

Mr. MILFORD. No. That was, in my opinion, our key problem. They did not really understand how intelligence is gathered. They did not, I believe, understand the real significance of the 60,000 or 70,000 documents that they were handling. And I think this was the tragedy.

I don't question any of the staff members or the members' integrity, or intent. It's just that intelligence is a very complex field, and you have to be extremely careful. You can't oversimplify or jump out in isolated instances, because it may have a ricochet effect in other areas.

Mr. MARSHALL. Now, during the course of the Select Committee's work the committee was aware, was it not, of leaks which were occurring from time to time to the news media?

Mr. MILFORD. Very much aware.

Mr. MARSHALL. Were there any investigations initiated by the committee to determine the cause of those leaks and to identify sources of the leaks?

Mr. MILFORD. None to my knowledge. In fact, Congressman Treen and I brought this matter up and requested on two occasions, I can remember, that we take some sort of investigative action.

There was reluctance on the part of the majority of the committee to call in administrative agencies. They felt it was an invasion of the congressional prerogatives to invite the FBI or similar agencies to come in and investigate. And we had no means of our own to investigate other than just ask the members and staff members. Obviously if you should ask them, they would not say: "Yes, I leaked something out."

Mr. FLYNT. Was any action taken by the committee to investigate leaks of classified information taken in executive session?

Mr. MILFORD. None to my knowledge, Mr. Chairman.

Mr. MARSHALL. Mr. Milford, on January 28, 1976, Mr. Daniel Schorr of CBS appeared on television and showed what appeared to be a draft of the Select Committee report.

Now, following that appearance on television by Mr. Schorr and the exhibition of that report, did the committee take any action to investigate the source of that particular leak?

Mr. MILFORD. None to my knowledge.

Mr. MARSHALL. Was there any explanation given by anyone about that?

Mr. MILFORD. Well, again, there was a reluctance to call in administrative investigative agencies, and we had no means ourselves to do it. That was sort of the way it was left.

Mr. MARSHALL. Now, I would like to invite your attention to rule 7.3 of the rules and security regulations which were adopted by the Select Committee on Intelligence and I will read that to you very briefly:

Until such time as the committee has submitted its final report to the House classified or other sensitive information in the committee records and files shall not be made available or disclosed to other than the committee membership and the committee staff; except as may be otherwise determined by the committee.

Now, did the committee interpret this rule to mean that after it had adopted its January 23, 1976, report, or the final report, that this was then to be made available to the public or was there another interpretation put on that rule, or was any interpretation put on it?

Mr. MILFORD. Within the committee there was a tremendous amount of discussion and the famous 9-to-4 vote, which you will see throughout the committee hearings, on the drafting of that report and the release of it.

The majority opinion on the committee was that it should be handled like any other House report. When we approve it, it goes for printing and is distributed like any other House report. This was what prompted me to lead out and to gain the amendment that Mr. Young offered. I drafted the amendment, that Mr. Young introduced in the Rules Committee, to stop the publication of the report or distribution of the report.

Mr. MARSHALL. Was there any consideration given by the committee to the fact that the January 23, 1976 report contained secret information, even though it did not contain the secret documents from which it came?

Mr. MILFORD. Yes. This again was another 9-to-4 vote battle that was carried on. We first attempted during the report markup to extract the technical details from the report, and were soundly defeated on every corner.

Then we tried to keep the report from being filed. Finally, a floor fight resulted in the House itself prohibiting general distribution of it.

Mr. MARSHALL. Do you recall on October 1, 1975, that the Select Committee reached an agreement with the Executive concerning the conditions under which certain information would be allowed to be made public? Those conditions being, and I am paraphrasing that,

either the security marks would be plainly displayed and distributed only to authorized persons or that the President himself would say that the information could be released. Do you recall that agreement?

Mr. MILFORD. Yes. I didn't understand the agreement exactly in that form.

Mr. MARSHALL. All right, sir, would you tell us what you understood the agreement to be?

Mr. MILFORD. It was my understanding that the administration would loan to the committee certain classified documents. This agreement came about after an argument had developed concerning whether or not the committee had the right to unilaterally declassify information. There had been an attempt by the committee, during the hearings, to declassify certain information.

The agreement came about, as I understand it, wherein the committee would not declassify information without first calling the appropriate agency in and hearing the agency argument. If there was still disagreement, the next step called for the President to personally certify that the information or data was vital to national defense.

If he then certified it was vital to national defense, and the committee still wanted to declassify it, then it was to be settled by the judiciary. That is my understanding of the agreement.

Mr. MARSHALL. Was the agreement ever reduced to writing?

Mr. MILFORD. I think it appears in the committee records where it was discussed.

Mr. MARSHALL. Does it also appear—do you recall whether there was a copy, a signed copy of the agreement in the committee record?

Mr. MILFORD. I don't believe there was a formal signing as such. I believe it was read into the record and I seem to recall we voted on it.

Mr. MARSHALL. There was a statement of the agreement or purported statement of agreement in H. Res. 982 which has been described, of course, as the amendment in which the House on January 29 voted to keep the Select Committee's report secret.

Is that the same agreement?

Mr. MILFORD. It's part of the agreement, yes.

Mr. MARSHALL. Part of the agreement?

Mr. MILFORD. Yes, that was my amendment that Mr. Young introduced in the Rules Committee, and then carried to the floor as part of H. Res. 982.

Mr. MARSHALL. Let me read that into the record at this point to see if you can supply for us the additional part of the agreement.

House Res. 982 reads as follows and I quote:

That the Select Committee on Intelligence shall not release any report containing materials, information, data or subjects that presently bear security classifications unless and until such reports are published with appropriate security marks and distributed only to persons authorized to receive such classified information. Or, until the report has been certified by the President as not containing information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal Government.

Mr. MILFORD. That was essentially part of the agreement, as I understood it, that we had with the administration. In addition, if after the President certified that a particular information or document was vital to our national security or would be harmful to ongoing intelli-

gence operations and if the committee still wanted to declassify, then as I understood the agreement they could go to the judiciary for in camera hearings and a final resolution.

Mr. MARSHALL. Mr. Pike in his testimony yesterday said that he did not interpret that agreement as applying to the final report of the Select Committee. Was that ever considered by the committee?

Mr. MILFORD. Yes. That was discussed, and again, resulted in a 9 to 4 vote disagreement within the committee. I really can't see how one can make an agreement that they are going to receive certain information, which is classified, and say: "OK, we won't release it during the hearings." Then, when the hearings are over simply release a report containing the classified information. That doesn't make sense to me.

Mr. MARSHALL. As you recall the agreement, did it make specific reference to the final report or did it simply leave that out?

Mr. MILFORD. Well, there was no mention of the final report in the agreement.

Mr. FLYNT. We were talking a few moments ago, Mr. Milford, about the actual transmission to unauthorized persons or delivery to unauthorized persons of a classified document, and then the question was raised, do you see any difference between such a document in its entirety being given to an authorized person or lifting the classified part out of it, and putting it in another document and then giving that secondary document to an unauthorized person?

Mr. MILFORD. I can't see any difference, Mr. Chairman.

Mr. MARSHALL. But if the final report contained information which had been lifted out of highly classified documents, and that would then be in the same category as we just discussed, the rule generally being that if any portion of a document received is placed in a classified category, that the entire document must receive the highest category of classification that any of its component parts has. Is that your understanding?

Mr. MILFORD. That principle, Mr. Chairman, is as old as our security system. It's common practice throughout any security agency or with anyone handling classified material.

Mr. FLYNT. Would you describe it as the base of classification procedure?

Mr. MILFORD. Certainly.

Mr. FLYNT. If you will, let me ask one more question at this point. You remember, and you are familiar, I believe, with the murder of an intelligence operator of this country in a Mediterranean area.

Mr. MILFORD. I certainly am.

Mr. FLYNT. Do you feel you want to discuss that publicly or do you feel it can be discussed publicly?

Mr. MILFORD. I think just about everything surrounding the incident has been made public, Mr. Chairman. It's a case in point where the identification of agents or the revelation of sources and methods can be very damaging, not only to certain individuals, but even to the Nation as a whole.

Mr. FLYNT. Would you say it's an accurate statement to say that the death of this agent was due in large part, perhaps entirely to his identity being made public as an intelligence agent of the United States?

Mr. MILFORD. I haven't personally investigated this case, Mr. Chairman, and I don't know that I could make such a statement.

I would say this, in generalities. If our agents are identified, that their very lives can be placed in jeopardy.

Mr. FLYNT. Let me ask the question another way. How soon after his identity was published and revealed was he assassinated?

Mr. MILFORD. I can't remember the period of time, but it was a matter of a few days.

Mr. FLYNT. Less than a month and possibly less than a week.

Mr. MILFORD. Yes.

Mr. FLYNT. Go ahead, counsel.

Mr. MARSHALL. As I understand your testimony then, Mr. Milford, you are stating that it is not the document that is being classified, it is the information within the document, that is, the classification.

Mr. MILFORD. Certainly. If you have a bird in a cage, Mr. Marshall, and you steal the bird; it's rather immaterial whether you get the cage or not, because the bird is the object you are after.

Mr. MARSHALL. Now, Mr. Schorr stated in an article in the Village Voice on April 28, 1976, that he had possession of the select committee report or a draft of the report on January 25, 1976. Did you give this report or a draft of any part of the report to Mr. Schorr or any other person?

Mr. MILFORD. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. MILFORD. No, sir, I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever, sir, surrounding the circumstances of the publication of this report or any part of it?

Mr. MILFORD. No, sir, I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. MILFORD. No, sir.

Mr. MARSHALL. Mr. Milford, did you divulge any part of the report or draft of the report to any member of the media or anyone acting on behalf of a member of the media?

Mr. MILFORD. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. MILFORD. No, sir.

Mr. FLYNT. Mr. Price?

Mr. PRICE. I have no questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Thank you, Mr. Chairman.

Mr. FLYNT. If you will yield, Mr. Spence, in an effort to give everybody an opportunity to participate in the questioning, the Chair is going to impose a 5-minute rule.

Mr. QUILLEN. Mr. Chairman, I object to that. We have been here now 55 minutes, no one on this side has been able to ask any questions, therefore, I object.

Mr. FLYNT. The Chair is still going to observe the 5-minute rule.

Mr. Spence is recognized.

Mr. SPENCE. Mr. Milford, as I understand the first part of your testimony, your main concern is that we find out who leaked this material so that the other members' names will be cleared; is that right?

Mr. MILFORD. Yes, sir.

Mr. SPENCE. If, after we have interviewed or questioned all of the members of the committee and all of the staff people on the committee, and all of the others who had anything to do with this select committee, and we are still unable to find who leaked the information, your position is that we should call Mr. Daniel Schorr and ask him directly this question?

Mr. MILFORD. Yes, sir.

Mr. SPENCE. That is all the questions I have, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Spence.

Mr. Teague?

Mr. TEAGUE. Mr. Chairman, I have no questions. I would like to thank Dale for all the work he has done on this subject and I would like to yield the rest of my time to the gentleman from Tennessee, Mr. Quillen.

Mr. FLYNT. The gentleman from Tennessee is recognized for 9 minutes and 50 seconds.

Mr. QUILLEN. Mr. Chairman, I shall not appeal your ruling but I think in all fairness that we are here as a member of the same team and I do not have 5 minutes of questions. But, I think in fairness to the members of this body, on each side, that if we do have, we should have that privilege, since the chairman and the staff member has consumed almost 1 hour. I would like that statement for the record.

Mr. FLYNT. If the gentleman would yield the Chair will make this further statement: That at the conclusion of the first round of 5 minutes it is customary to give additional time as may be requested or desired to all members. The only purpose of the Chair's statement on the 5-minute rule is to give every member of the committee a reasonable opportunity to ask questions on the first round of the questioning period. I thank the gentleman for yielding.

Mr. QUILLEN. Mr. Milford, the Congress should be a coequal branch, as you have stated.

Mr. MILFORD. Yes, sir.

Mr. QUILLEN. And I agree with it. An you further stated that the Congress should have the authority to declassify.

Mr. MILFORD. Yes.

Mr. QUILLEN. Should the agency involved have the same privilege of declassification on matters classified by the Congress, since the executive branch is also a coequal branch?

Mr. MILFORD. I don't believe, Mr. Quillen, that Congress classifies. As Mr. Pike pointed out yesterday, we have really no means in Congress right now of classifying.

Mr. QUILLEN. We have a procedure under the House rules under executive session.

Mr. MILFORD. Executive session, yes.

Mr. QUILLEN. That that matter is not to be released and that is the purpose of this investigation, to find out who leaked certain information.

Mr. MILFORD. Mr. Quillen, I am not proposing a contest between the Congress and the administration. Quite the contrary. In the proposal that I have submitted in House Resolution 1095, both the administration and the Congress would be involved before anything is declassified. It mandates, for example, that both the appropriate committee of jurisdiction and the leadership committee must call in the

appropriate agency and receive their testimony before a declassification would be possible.

I am simply trying to find a responsible check and balance system where, when we discover classification abuses, that the Congress then, through its oversight powers, can correct the situation.

Mr. QUILLEN. Well, I don't disagree with the gentleman. I am leading to the point that I think that proposition is almost an impossibility. The Congress has oversight on many of the agencies, independent agencies such as OSHA, EPA, such as you name it. We have that oversight which the Congress fails to change or to abolish.

What I am getting at, the executive sessions of this Congress become open. This very committee yesterday in a public hearing adjourned to an executive session, and one of the papers came out with what the paper reported to have transpired in the executive session. So I just wonder if the Congress of the United States took the secret documents and classified documents from the agencies downtown, held hearings or discussed them in executive session to change classifications how long would they remain secret.

Mr. MILFORD. I am not sure.

Mr. QUILLEN. How long would they remain secret if any committee of the Congress discussed and reclassified material or refused to reclassify material?

Mr. MILFORD. Well, I am not sure I can answer the question, Mr. Quillen. I have to get back to what I am really trying to obtain here, and that is to cut down the exposure of highly classified data which, again, the basic principle still lies: "The ability to maintain a secret is directly proportionate to the number of people who know that secret."

In the proposal I am making, we try to cut down the exposure of classified information, by consolidating the intelligence functions into one committee. At the same time, the proposal will provide a forum for any Member of Congress, who discovers abuses by whatever means, to be able to have a forum he can go to and get a hearing. This allows the Congress to consider these matters in a responsible manner, wherein security information is still protected.

One of the provisions in this resolution provides that, if any member does leak or release information, he would be subject to expulsion from Congress.

Mr. QUILLEN. Well, I think that is a very fine suggestion.

If the gentleman from Texas will recall, I opposed the creation of the Select Committee on Intelligence. I thought it would be a witch hunt, and I thought some of the things that have come to pass would happen, and that is what happens when you create committees to delve into the secret or the covert, overt operations of this Government.

I think our country is very important, and I don't know what benefit the findings of the select committee had after the report was filed. I haven't read it, but the House voted over two to one that it not be printed and not be divulged.

Mr. MILFORD. I think it's no secret, I was not completely pleased with what the House Select Committee on Intelligence did. I felt that it should have spent more time really looking at "now" intelligence, and present intelligence, procedures. I felt that it should see whether past abuses and errors had been corrected, as opposed to what

I felt was the case of "digging up old dead cats" to see how they smelled in the newspaper.

I felt we really needed to get into an oversight role of seeing what is taking place in "now" intelligence, whether or not it's a coordinated activity, whether or not our intelligence dollar is being spent "now" efficiently, as opposed to seeing what happened 10 years ago.

Mr. QUILLEN. Well, based on when you have select committees so constituted, I recall that the committee had to be reconstituted before it started operations, so it started out on a bad foot to begin with, and, in my opinion, ended on a bad foot, but be that as it may, the job of this committee, in my opinion, is to find the leak and then second, consider the cure.

Mr. MILFORD. Yes.

Mr. QUILLEN. So you have answered the questions of the committee counsel that you have no knowledge as to who leaked the material, and I would like to thank Mr. Teague, the gentleman from Texas, for yielding his time to me.

Mr. Chairman, I have no further questions.

Mr. FLYNT. Thank you, Mr. Quillen.

Mr. Hébert?

Mr. HÉBERT. Thank you very much, Mr. Chairman.

I shall try to ask the questions in the 5-minute limitation, which I do respect.

Mr. Milford, I want to join in saying that you have made a fine presentation, and I think the chairman has put his finger on it. Let us get down exactly to the bolts and nuts of what we are trying to do here.

Mr. MILFORD. Yes.

Mr. HÉBERT. We are roaming all over about what is secret and not secret and what was done. Let us face the facts of life. The individual whose name appears in your statement, he is not the man on trial. The U.S. Congress is on trial. Because without the leakage from the Members of the Congress, not excluding this committee, the newspapers wouldn't have anything to print from a reliable source.

Mr. MILFORD. You are absolutely right, Mr. Chairman.

Mr. HÉBERT. This is what we have to find out, and I am not going to ask, as I have said before, any newspaper reporter what his reliable source is. I think the reporter has a right to that reliable source.

But what he does with that information that he receives is subject to the law of the country. Now, don't let us get ourselves trapped in here, Mr. Chairman. We are playing a nice game around here, and the news media is just waiting for us to make the real slip, and that slip is to have some individual sit in the chair where you are sitting as a forum to expound the public has a right to know, and we have got a right to print it. The public has got a right to know certain things, but not everything.

The same thing with Members of Congress. The responsibility of this Nation supercedes anything, and let me point out right here, let me read here personally from your statement, "I would like to see Mr. Schorr brought before the committee—by invitation or subpoena, if necessary—and questioned about his knowledge of the person or persons responsible for the violation of House rules that placed the report in Mr. Schorr's hands." If this individual would answer that question,

that would be fine. But his lawyer has already notified us that he is not going to answer those questions and why won't he answer them? He wants to be charged with contempt, and why does he want to be charged with contempt? So they can put him in jail, and why does he want to go to jail, so he will have a story running for weeks ahead of time, and I am talking on experience, 50 years experience.

I have never met a reporter in my life who didn't want to go to jail, me included and I went to jail, and I never did reveal my source, and I might say if I had I probably wouldn't be here today. But I am looking at the practical side, and I think we ought to get right down to the bolts and nuts of this whole thing and understand that it is the Congress that is on trial today.

The way they were printing these reports that went around I thought they had a printing press running and when our Xerox's came in, you didn't have to turn cranks any more, you just sneeze and they come out here and there and 60 copies here and 60 copies there, good God, what are we letting ourselves into, and I think, Mr. Chairman, I discussed with you, I think you are right in what you say.

We don't have to have the man, we don't have to play that man's game to get the facts. Let us play our game.

Supposing an individual, and this is just a thought, an individual got a gun. As long as he had that gun and did nothing with that gun, whether he got it illegally or not, he didn't hurt anybody. But when he kills somebody, then he violated the law and it's up to the courts to convict that man on violating that law, and not on necessarily where he got the gun to commit the murder. And that is the way I look upon the newspapers today.

They have a responsibility. The canons of the profession of the newspaper business itself, the very canons of the American newspaper people is a responsibility not to print everything. But to print things only in the interest, the national interest, and I think that is all we should confine ourselves with, Mr. Chairman, and don't let the other guy—I like the kid that pitches up in Detroit, the bird that talks to the ball, except when it gets a home run, and the ball talks to him. I like to be talking to the ball. I think that is the only way to play it here, is our way, and don't squirm and squint and shuffle around in the chair because it's some of our members involved.

We have to look at our own house first, that is all.

Mr. MILFORD. Mr. Chairman, I think you are right in some respects, and respectfully disagreed with others. I proudly carried a press card for 19 years from 1953 to 1972. I think you are right that this Congress is on trial, but I also think our national press is also on trial.

Mr. HÉBERT. I admit that, too, we are both on trial.

Mr. MILFORD. My old editor used to give me five "W's" to guide me in what I produced for the television news, for my own weather presentations and what have you. But I was also very conscious of the responsibility of the press in its accuracy.

I am not a lawyer and I don't understand many of the legal arguments and the Constitutional arguments, but I find it hard to believe that our Constitution would justify and allow a situation to develop where matters that would harm this country could be printed in a newspaper.

Mr. HÉBERT. May I interrupt you there? We do not allow it when we punish the individual for doing exactly that. But the individual wants to be punished.

Mr. MILFORD. I am not trying to punish, as I stated in my statement, I am not attempting to try Daniel Schorr.

Mr. HÉBERT. But he wants us to do this to serve his purpose.

Mr. MILFORD. He has violated no law, but what we are trying to reach is the person that did violate the law, that being the member or staff members involved here.

Mr. HÉBERT. Of course, recent court decisions which disagree with that decision were refused review by the Supreme Court, the decisions that put the reporter in jail out in California. I think that is one of the very rare ones of that types.

Mr. MILFORD. As I stated, I am not trying to prosecute Mr. Schorr, I don't want to put Mr. Schorr in jail. I feel though any responsible citizen would want to prevent law violations. And we are dealing here with a law violation. If that individual gained from it, it seems to me he is an accessory after the fact. I don't know. Again, I am not a lawyer.

Mr. HÉBERT. You can use media prints, that would be fine, but let's see how they handle that story, that is what I am saying right now, but this is a typical example this morning. Let's see how it's handled, let's see where the adjectives are put. I can write it upstairs, downstairs or right through the middle, and when you tell me I can't influence you, you are the first guy I am going to influence, easy.

Mr. FLYNT. Mr. Quie?

Mr. QUILLEN. Mr. Chairman, if the gentleman from Louisiana would yield, I remember reading—

Mr. FLYNT. If the gentleman from Minnesota would yield.

Mr. QUIE. I yield.

Mr. FLYNT. Thank you.

Mr. QUILLEN. I remember reading an editorial from the Editor and Publisher in disagreement with what Daniel Schorr did. The Editor and Publisher is the spokesman, so to speak, for the newspapers of this country, and Mr. Chairman, I would like to deliver to the committee a copy of that editorial, and ask the committee's indulgence to include it in the record at this point, if the committee so desires.

Mr. FLYNT. Without objection.

[The above-referred to information follows:]

[From the Editor & Publisher, Feb. 28, 1976]

THE INTELLIGENCE REPORT

The Daniel Schorr—*Village Voice*—intelligence report controversy will continue for some time and could be damaging to press freedom. Certainly, it has done nothing for the advancement of a "shield law" in Congress.

Publication of the secret document, the leaked story, has been prevalent in recent months and years. This one, however, has an ingredient not present in other such cases. Editors, columnists and reporters ought to examine it from the point of view of the average reader or citizen.

This was not a report being suppressed by a bureaucrat, a government agency, or a congressional committee. Essential parts of the report had been reported but the full text was not available until Schorr obtained a copy. Schorr noted: "I could not be the one responsible for suppressing the report."

What made him think this was his sole responsibility?

Publication of the report had been approved by the House Select Committee on Intelligence. But, the full membership of the House voted to countermand that decision until the report had been cleansed of what it believed to be important classified information.

This was not a whimsical decision. Enough members of the House were convinced of its importance to national security to take another look.

We are aware of and sensitive to all the arguments about the "people's right to know." We have used them repeatedly on this page and we remain dedicated to that principle.

However, here, for the first time to our recollection, the people's elected representatives (the House of Representatives) decided in behalf of the people (its constituency) that information of importance to the national security (the people's security) should be re-examined before it was released.

At that point, a member of the press disagreed and took it upon himself to act as the people's surrogate in releasing the information in spite of the fact that the people's *elected surrogate* decided otherwise. It brings up the charges we have all heard before: "Who elected the press?" And, more and more people are asking themselves that question, rightly or wrongly.

This is a difficult issue for the press. It must insist on its right to investigate, to probe, to uncover, to expose, to report. But, can it expect the support and appreciation of its readers if it exposes national security and/or international intelligence information that a majority of the House of Representatives believes should not be revealed? It is a confrontation in which we believe the press will come out second best.

CBS SUSPENDS SCHORR—REPORTERS GROUP DECLINES PAYMENT FOR PIKE REPORT

Any gift that may be offered to The Reporters Committee for Freedom of the Press in connection with the publication of the Pike Report in the recent issue of the *Village Voice* will be declined.

The committee issued a six-part statement February 24 defining its relationship to the episode in which CBS News correspondent Daniel Schorr made available a House Intelligence Committee report to the *Voice*, a New York weekly.

The executive committee, which worked long hours on the statement, is composed of Lyle Denniston, *Washington Star* reporter; Fred P. Graham, CBS-TV reporter; Jack C. Landau, Newhouse, Washington, D.C., bureau reporter; Robert C. Maynard, *Washington Post*; Jack Nelson, *Los Angeles Times*, Washington reporter; and Eileen Shanahan, *New York Times* reporter.

This is the statement:

"1. Daniel Schorr approached the Reporters Committee with the proposal that he donate the proceeds, if any, that he might receive from placement of the Pike Report with the publisher. He did not ask for any commitment from the committee in return, nor was any offered. In other words, there was not quid pro.

"2. The Reporters Committee agreed that it would accept the proceeds, if any, because there appeared to be no likelihood that any national interest would be injured. In view of the fact that the New York Times and CBS-News already had access to the Pike Report and had quoted extensively from it, publication of the report by a commercial publisher appeared to us to be similar to such undertakings as the publishing of the Pentagon Papers in book form by the New York Times and Washington Post.

"3. The Reporters Committee also agreed it would accept the proceeds, if any, because the offer met the two conditions that the committee has always attached to any proposed gift: that no obligation to the donor be incurred and that his or her identity and the amount of the gift be disclosed.

"4. At no time before or after publication of the Pike Report in the *Village Voice* has any member of the Reporters Committee had any contact with Clay Felker (Voice publisher); nor has any money been offered by him or received. The final arrangements for publication were made without the approval or knowledge of any member of the Reporters Committee.

"5. At no time did any member of the committee have possession of the Pike Committee report or access to it, and no one on the Reporters Committee has ever known the identity of Mr. Schorr's source for the document.

"6. Although no conditions ever were or are now attached to the limited aid we gave Mr. Schorr—which consisted of putting him in touch with the lawyer so he could make his own arrangements—the committee wishes to avoid the

appearance of a quid pro quo. Therefore, the committee has decided that it will decline any gift that may be offered in connection with the publication of the Pike Report."

A Reporters Committee staffer, Libbie Keefer, law clerk, told *E&P* that no one on the committee, a Washington-based legal defense fund for reporters, has ever known the amount of what the sale of the Pike Report was to have been. The nation's news media had reported in the past week that the committee was the beneficiary of the "substantial" sale.

If the gift would have been given to the committee, the group would have been compelled to disclose the amount because of its non-profit, tax-exempt status.

SCHORR SUSPENDED

Daniel Schorr, CBS News correspondent, has been "relieved all reporting duties for an indefinite period" pending government investigations into his leak of a House committee's intelligence report to the *Village Voice*.

Following is a statement issued February 23 by Richard S. Salant, president, CBS News, with regard to Schorr's suspension:

"In view of the adversary situation in which Dan Schorr is placed in pending government investigations, he has agreed with CBS News that he will be relieved of all reporting duties for an indefinite period.

"CBS News will support Mr. Schorr by providing legal counsel insofar as investigations relating to his CBS News activities are concerned.

"We will fully support Mr. Schorr against attempts to require him to reveal the source through which he obtained the report. These aspects of the matter involve fundamental issues of press freedom.

"In respect of his subsequent actions in arranging for publication of the report, Mr. Schorr acted as an individual and, he states, as a matter of individual conscience.

"In order, however, not to prejudice the important principles involved in the acquisition, and reporting on the report, we shall postpone further CBS News action relating to Mr. Schorr until all government proceedings have been resolved."

The following statement was issued by Schorr:

"Experience has quickly taught that it is not possible to work as a reporter while personally involved in a controversy over reporters' rights, and I accept that reality.

"I do not seek the legal contests which may lie ahead, but I am confident that, as they unfold, it will become clear that what is involved beyond specific details of my action is the public's continued right to know in the face of a secrecy backlash.

"CBS News is supporting me with legal counsel on the fundamental Freedom of Press issues relating to CBS News activities. With its concurrence, I have retained Joseph A. Califano, Jr."

An issue in the case is why the *Village Voice* was given the report. Did Schorr make an effort to distribute the report elsewhere and why didn't he have CBS broadcast the report, or was he rejected? According to sources at CBS, the network is satisfied that Schorr broadcast as much of the report as it wanted. The January 26 issue of the *New York Times* reported the main details of the report and in its January 20 issue published portions of the draft.

NO CHOICE

Jack C. Landau defends himself and the Reporters Committee for Freedom of the Press against charges of leaks and checkbook journalism with the comment "we had no choice" and the statement that neither he nor other Committee trustees are personally benefitting financially.

Landau, *Newhouse Newspapers'* Supreme Court correspondent, said the Committee "had no choice but to give the name" of CBS correspondent Daniel Schorr to the New York City weekly *Village Voice* as the source of the secret House Intelligence Committee report on CIA activities. (The House Ethics Committee will investigate the Voice's February 16 and February 23 publications of the classified intelligence documents with a view to possible contempt action against Schorr.)

Schorr has acknowledged that he provided the Congressional report to The *Village Voice*. In its February 16 issue the Voice printed a 24-page supplement of excerpts from the report entitled, "The Report On The C.I.A. That President Ford Doesn't Want You To Read." In its February 23 issue The Voice printed a

special 10-page section headed, "How Ford, Kissinger and the C.I.A. Obstructed the House Probe."

On January 30, the House had voted to ban publication of the report until it had been censored of information in it that was still classified. Schorr obtained a copy of the report and used information from it in reporting for CBS-TV and radio.

When the House voted to keep the report secret, Schorr has said, he realized that he might have the only copy of it outside the government. "I could not be the one responsible for suppressing the report," he said, in explaining why he made it available to the Voice.

Representative William F. Walsh, Republican of New York, asked (February 20) that Schorr's Congressional press credentials be revoked for what he called the reporter's "contemptible act" in leaking the report.

Walsh, in a letter to House Speaker Carl Albert and to Senator Howard W. Cannon, Democrat of Nevada, chairman of the Senate Rules Committee, said that Schorr "overstepped the bounds of a free press and has violated the code of ethics observed by all professional journalists." Cannon said that he should have his credentials withdrawn, rather than be held in contempt of Congress, because Schorr would only wear the contempt citation like a medal of honor.

On Thursday Representative Samuel S. Stratton, Democrat of upstate New York, introduced a resolution calling on the House's ethics committee to investigate the leak of the report. The resolution passed by a vote of 269 to 115, and hearings were scheduled for February 24.

Schorr has blamed the Reporters Committee for leaking its arrangements with him, but Landau maintains that no details were revealed by the Committee until they were common knowledge among Washington reporters.

The *New York Times* has charged the Reporters Committee with practicing "checkbook journalism" by accepting the Village Voice's payment for the CIA report. But Landau sees this as less questionable than the Times' sale of a book based on the Pentagon Papers.

"The Times made a couple of dollars a book," Landau said, "while none of us on the Committee are making anything" from the intelligence documents. All proceeds are going to the Committee's efforts to fight "gag" orders and other instances of what it considers judicial censorship, he said. "We simply accepted a check. What were we supposed to do, turn it down?"

Landau's comments came before his appearance at a Weston, Mass., seminar February 19 on a free press, fair trial and "gag" order problems, sponsored by the Massachusetts Bar Association and the Northeastern University journalism department. Before his talk, in which he claimed "perhaps thousands" of "gag" orders had shrouded the criminal justice system in secrecy, he also had harsh words for new plans to punish officials who leak information.

He called President Ford's proposed legislation to make it a crime for a government employee to improperly reveal secret information another version of the controversial Senate Bill One—a proposed criminal code revision which would make it a crime to communicate government information without authorization.

(The proposed legislation would broaden sanctions against leaks about information-gathering but create narrower standards for prosecution for disclosing other classified data than would Senate Bill One.)

During the panel discussion, Massachusetts Superior Court Judge Robert J. Hallisey agreed with Landau that bar-press tension is increasing but declared that someone's "right to life and liberty (is) more important than the right of free speech of a press out to hang him."

Most media-bench conflict, the judge said, comes from the timing of publication, not publication itself. "What's the rush" to print information which may hurt a defendant's chances for a fair trial, he wonders, claiming that when First Amendment rights of a free press and Sixth Amendment rights to a free trial clash, judges "have more training in balancing equities" than reporters.

Landau and Worcester (Mass.) *Telegram & Gazette* editor Robert Achorn suggested the press might re-evaluate its cooperation in creating coverage guidelines for fair trials in the wake of orders prohibiting reporters from attending public proceedings or even mentioning their exclusion from the courtroom.

Landau and other panelists expressed hope that the U.S. Supreme Court's ruling on the constitutionality of a Nebraska order prohibiting the press from attending proceedings in a murder trial will set clear standards for coverage.

"Nobody knows the law" now, claimed Landau, "although everyone thinks he does."

(The American Bar Association's House of Delegates has postponed action on a proposed court procedure recommended for use when a judge is considering barring the press—until after the Supreme Court's decision.)

Achorn said "rash assumptions, unsupported fears and perhaps a taste of power" have led judges to be more extreme as the media becomes more responsible. He called prior restraint on criminal coverage "a fancy term for censorship."

Former Massachusetts Governor Francis W. Sargent backed sealing or expunging records of anyone found not guilty of an offense. Sargent, chairman of the board of the Washington, D.C.-based Police Foundation, supported a 1972 Massachusetts law prohibiting keeping records of the arrest of people eventually found innocent. He said the FBI is circumventing the law by keeping and computerizing these records.

Sargent conceded it would be "appropriate" for political candidates to disclose their records, but would leave the decision on whether or not to do so up to them and not the press.

New York State and Pennsylvania joined Massachusetts in refusing to join in a national criminal records computer bank controlled by the FBI, which Sargent said violates the right to privacy. Federal legislation based on the 1972 Massachusetts law is pending in Congress.

Mr. QUINCY. No questions.

Mr. FLYNN. Mr. Bennett?

Mr. BENNETT. First of all I want to thank the gentleman from Texas, Mr. Milford, for being so constructive. Many Members of Congress don't really take the initiative to run with constructive ideas and make suggestions to improve things, but find it easier to be critical without any offered solution.

I say that, however, with some question in my mind as to whether your exact format of what you have in mind will accomplish what you desire.

Before I say anything about that, I would like to say that I think there has been too much talk about equality between the Executive and the legislative and judicial branches.

They are not equal at all. They never were equal. They are not equal under the Constitution, nobody said they were to be equal. There's nothing like that in the Constitution whatsoever.

I think our Founding Fathers would be absolutely astounded to hear the conversation about equality between the branches. Congress makes the laws and even with the President's opposition it can make the laws. The President can't make any laws.

Only the Congress makes laws. He can veto the laws, but they can be overridden by Congress, and the judiciary occupies only a small portion of the activities of Government. It is an important field because they have taken it upon themselves to construe laws in the context of the Constitution, but there is no such things as equality. The checks and balances which we have, and which our forefathers put into the Constitution, that is our Government.

Now you seek to cut down the exposure of data of a secret nature. I certainly would agree with that objective. I'm in doubt, however, that the committee that you suggest would do that. And I would like to ask this question. Who would be eliminated from knowing anything about secret data by the creation of this committee?

Mr. MILFORD. Right off, six committees that now—in fact, even more—that virtually have identical briefings and identical presentations.

Mr. BENNETT. How could the Armed Services Committee, of which I am a member, fulfill its functions and not have the secret data about the equipment which we are developing, and what our opponents have? How could you possibly exclude that from their intelligence operation?

Mr. MILFORD. You cannot. That is where your cross-pollinization of membership comes in. You would have two members from Armed Services that would be on this committee. He would then be able to bring into or to the attention of the Armed Services Committee those factors that the Armed Services Committee needed to consider.

Mr. BENNETT. Maybe if we were dealing with the middle 19th century that would have been possible. But today even on the Seapower Subcommittee, which I chair, and certainly on the Research and Development Committee, which is chaired by Mr. Price, there is no way in which I could get the necessary information with regard to the ships we ought to have, and what they ought to have on them by cross-pollinization from an intelligence committee; no way at all. I could not act intelligently.

And that is one of the problems we are confronted with in the Congress today, a tremendous overlapping of work schedules.

For the last month, we worked until 10 to 11 o'clock at night on the floor. And we worked in this committee from 9 a.m., something like this, in the morning, until 5 in the afternoon. At the same time I have a committee between me and the Senate, the conference committee, meeting at the same hours. I have to be at three very responsible places at all hours of the day. It is just not possible. And for you to think that it would be possible for the Seapower Subcommittee to make determinations about ships and the arms on those ships, or the Research and Development Committee, to do that sort of thing for them, from the cross-pollinization of two members of the Armed Services Committee on this committee, it is not so. It cannot be done. It is just not physically possible. And as a result you are going to have a greater number of people have the secret. You are not going to have a lesser number, but a greater number.

Now, I do agree with you strongly that there is a need for more orderly process in declassification. There really are no rules at all about it. It is just a happenstance sort of thing. And I think it ought to be controlled by law. It ought not to be controlled by executive fiat. The method of going at classification and the method of going at declassification should be the subject of statutory law. And that is what this committee, if it has time, should address itself to, and that would be the most constructive thing this committee should do. I see no hope myself for the type of oversight you wish with regard to secret material, other than the oversight committees themselves, who after all are very knowledgeable in this field. They do know the nuances of it.

For instance, the Foreign Affairs Committee, which I am not a member of, knows the type of thing you referred to—that is, how, if you reveal information, make it public, it is very likely that a code will be broken, or something like that, or that a man will die who is in our service, would be murdered, because of his operations, things like that.

My committee, the House Armed Services Committee, is not so familiar with that sort of thing. We are very familiar with the type of things like laser beams, things like that, things being developed or

that can be developed, and what has been done abroad, and things of that type. It is just not possible in my opinion to have an oversight committee overall to do what you have envisioned.

Now, you could have an oversight committee on intelligence which looked into bad operations of the FBI, bad operations of the CIA. But we already have such subcommittees on the Armed Services Committee, with regard to the CIA, and with regard to the FBI, in the Judiciary Committee. And so there is that function being performed.

Now, I do not wish to be entirely negative in what I am saying. I want to congratulate you and I do not want to discourage you, because too many Members of Congress, as I said in the beginning, are too prone to be critical and not constructive. And ever since you have come to Congress you have been a very constructive Congressman. I have followed what you said with great care and seen that you have taken real leadership for things worthy of our country.

And I appreciate your concern in coming here, and being a thumb sticking out a little bit here and there for things you thought were right. I want to congratulate you on it.

I do want to conclude my remarks by referring again to the thought that there is no such thing as equality between the executive branch and the legislative branch and the judiciary branch. Our forefathers never envisioned that. It is only Congress that makes laws. And it is our responsibility to make the laws in this field. Whether this committee does it or somebody else does it, it is the responsibility of the Congress to make the laws that are shown to be needed, because of the very hearings we have had before.

Mr. MILFORD. Mr. Bennett, may I respond to one thing here, that I think you have made a very important point that needs to be clarified.

As you pointed out, in your subcommittee dealings with ships or what have you, you have a vital interest in intelligence. And Mr. Price in his R. & D. Subcommittee also has a vital interest in intelligence. And this is typical of what has happened in the past in this Congress—you are really only interested in intelligence dealing with ships, and he is really only interested in intelligence dealing with R. & D.

The simple fact of life is that the entire military functions of our intelligence agencies really could be called minimal. The vast expenditures and the real oversight, that has been totally overlooked by the Congress, deals with a considerable expenditure of money and functions carried out by scientists, by agriculturalists, by economists. Nobody is looking at this, because Foreign Relations is interested only in their thing. Nobody is looking at the entire intelligence, or providing oversight to the entire intelligence. This is a considerable function that is left out.

Mr. BENNETT. The Agriculture Committee, the Space Agency Committee—I wonder if they look at that. It astounds me that there is so much secrecy about agriculture, because we give away all our knowledge.

Mr. MILFORD. There is no secrecy. I'm talking about the agencies and the amount of money spent by these agencies.

Mr. BENNETT. In secret information.

Mr. MILFORD. Everything they get is not secret, Mr. Bennett.

Mr. BENNETT. I thought we were talking about classification here and secret materials.

Mr. MILFORD. We are talking about classification, and an oversight intelligence committee, which will solve some of the pressing problems.

Mr. BENNETT. What would an oversight intelligence committee do with regard to agriculture?

Mr. MILFORD. We spend probably as much time trying to determine what the various crop outputs are going to be in the countries throughout the world, and the condition of these crops, as we do on the military side.

Mr. BENNETT. But none of it is classified.

Mr. MILFORD. Some of it is, yes.

Mr. BENNETT. Well, very little. Why can't the Agriculture Committee handle that?

Mr. MILFORD. Because it fits in and is more efficiently handled as part of an overall intelligence operation.

Mr. BENNETT. I am very thankful for the fine presentation of this Member. I do not want to discourage him, despite my strong feelings on it. I might well be wrong. But I have expressed what I feel about it. Don't let it discourage you at all, because people like you need to be encouraged to be in Congress.

Mr. FLYNT. Thank you, Mr. Bennett.

Mr. Mitchell.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. Milford, I would like to read to you from page 11 of Mr. Bowers' report, and ask you if you feel this is an accurate characterization of the method of distribution of the intelligence report. This is a quote from a staffer. "There was a rush. It was extremely disorganized." This is Mr. Bowers' description. "It was so disorganized that those in charge could not recall who made the deliveries to which offices or the time they were made. There was no specific control system. Copies of the draft contained no identification whatsoever. They were not numbered nor were they charged out so they could be accounted for."

Is that an accurate description of the method of distribution?

Mr. MILFORD. Mr. Mitchell, I cannot testify from first-hand knowledge on that. I did not station myself within the staff committee quarters, throughout, and observe this. I can only answer in generalities, that in the closing days of the committee hearings, and during the drafting of the report, things were extremely hectic. And I know of occasions when, right within the committee meetings, we would have to call for copies of documents. These were immediately produced in such a manner that it would have been physically impossible to go through much of an accounting system. There was no accounting system, anyway, that I could determine. I cannot from my own knowledge confirm the detailed observation reported by Mr. Bowers.

Mr. MITCHELL. You mentioned, Mr. Milford, that as leaks occurred, you felt there was an insufficient attempt to investigate who was divulging what information. To your knowledge, were members of the committee ever asked if they were divulging material, sensitive material. Were you ever asked?

Mr. MILFORD. I was never asked.

Mr. MITCHELL. Were any other members, as far as you know?

Mr. MILFORD. Not to my knowledge.

Mr. MITCHELL. You stated also that the committee staff did not understand the significance of classified matter, that they were unskilled and inexperienced. How would you characterize their attitude toward the handling—even though they did not perhaps have an in-depth feeling of what they were doing—what was their attitude toward handling it? Were they trying to do a good job, or was it sort of flip or cavalier?

Mr. MILFORD. No; I think on the whole the staff tried to do a good job. They were generally a rather young staff. It was a more, I think, a lack of experience and a lack of a complete understanding of what they were really involved with, as opposed to anything deliberate. I would not characterize any single staff member as being either lazy or doing things wrong deliberately.

Mr. MITCHELL. Did they seem to have a respect for sensitive material?

Mr. MILFORD. Yes; for that which they considered to be sensitive. The problem was an apparent total distrust of the intelligence agencies. In many instances I would observe the staff consideration of a document that had been classified by the agency. The staffer, or even some of the members, would feel: "Well, heck, this is another case where they improperly slapped on a secrecy stamp." There was a lack of respect for the classification, rather than anything else. The staff seemed to personally feel that they were not violating anything because they didn't believe that the document should have been classified in the first place.

Mr. MITCHELL. Then the staff was making a determination as to what documents should be classified and which should not, you think?

Mr. MILFORD. Of course, this is one of the big rhubarbs that arose in the committee. Both the staff and the committee were going to declassify. The committee itself argued sometimes that they were going to declassify matters. This is what brought on this agreement we were talking about.

Mr. MITCHELL. You mentioned on page 4 of your report, Mr. Milford, that "He or any American citizen may seek out any report or data from the House of Representatives whether confidential or not and promptly publish it without any type of violation." Isn't that an exception there—the espionage law?

Mr. MILFORD. Yes; there is an espionage law and also laws dealing with our codes. But, what I was referring to in the statement is the fact that any citizen can legally publish or release information if he can gain possession of same. Our existing laws and regulations bind only those in official possession, whether it be in the administration or in Congress. Our committee rules bind only the members and the staff members. They do not bind the citizen nor do they bind the newsmen.

Mr. MITCHELL. One last question.

Would you expand on your statement on page 5? It says, "Under title II, section 192 of the U.S. Code"—this applies to Mr. Schorr's answering questions—"refusal of witness to testify—the Supreme Court decision in *Branzburg vs. Hayes, et al.*, Mr. Schorr would have no legal recourse but to reply." I don't know what that case is. What is the substance of it?

Mr. MILFORD. That was the case where a newsman had been called before a grand jury investigating illegal activities, and he had refused to answer questions posed by the grand jury, during its official investigation. Again, Mr. Mitchell, I must emphasize I am not an attorney, and I don't feel comfortable arguing law. In my lay opinion, this is a similar situation—a violation of law has occurred. This person has direct knowledge as to who committed that violation. Therefore, withholding that knowledge, in my own mind, would be irresponsible. This appears to be a similar situation as that in the Branzburg versus Hayes case. As I read it, it is the same thing. The Supreme Court has clearly ruled that a newsman has no special privileges above that of any particular citizen, as I read it.

Mr. MITCHELL. Thank you, Mr. Milford. I have no further questions, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Mitchell.

Mr. Cochran.

Mr. COCHRAN. Thank you, Mr. Chairman.

I wasn't going to ask any questions. But I am curious about the statement you just made, and wonder if you would give us the benefit of your thinking. You state that a violation of the law has occurred. I am curious to know what law has been violated, if you know.

Mr. MILFORD. The House rules.

Mr. COCHRAN. Then no statute of the United States or any State law has been violated to your knowledge, with the leaking of the report to Daniel Schorr?

Mr. MILFORD. No. As I understand it, our committee rules are the same as laws, or our House rules are the same as laws. And that a violation of the House rules is the same as violating a law. And again you are asking me to argue law and I—

Mr. COCHRAN. What House rule has been violated?

Mr. MILFORD. The rule that establishes the committee and allows it to make its own rules. And then you go on to the committee rule, which prohibits any Member or staff member from releasing data heard in executive session or classified data without the approval of the full committee.

Mr. COCHRAN. But that has one big failing in my judgment, and that presupposes that the leak occurred from a member of the staff or a Member of the House, or any employee of the House, when at the time the report was received there were many copies, we understand, at CIA, at Justice Department, at State Department, and maybe elsewhere, for that matter. So that if the document that was delivered to Daniel Schorr came from the executive branch, then neither a law of a State nor the Federal Government or a House rule has been violated.

Mr. MILFORD. If it comes from a Member of the executive branch, he has violated a law.

Mr. COCHRAN. What law has he violated?

Mr. MILFORD. The same law that protects security matters in the executive branch.

Mr. COCHRAN. I think this is the difficulty we are confronted with basically, or one of the difficulties, that we need to address, and that is that there is no adequate description of a law that would prohibit the giving of classified, legitimately classified information, to any person by any employee of the House or any Member of the House or any mem-

ber of the executive branch in my judgment. That not all such acts would fall under the prohibitions of the espionage law. And I think this is one of the key problems we are faced with.

Mr. MILFORD. As we stated in an earlier discussion here, I totally agree with you here that Congress should lay down statutes concerning this, rather than leaving it to the executive orders. I completely agree with you.

Mr. COCHRAN. That is all, Mr. Chairman.

Mr. FLYNT. Mr. Teague.

Mr. TEAGUE. Dale, do you believe any regulation, any rule, anything would have prevented this from happening? I was told on the floor, two young ladies delivered a copy of this report to an officer of the House of Representatives. They didn't know where they were, and they didn't know what report they were delivering. So there is no rule, no regulation that would have prevented what happened. It just gets down to the human beings involved.

Mr. MILFORD. Yes, any law can be violated. You are right—it goes down to the integrity of the people concerned. But by the same token, you can help that integrity along sometimes and encourage it if they are threatened by a tour in the slammer, or other appropriate encouragements.

Mr. TEAGUE. As you know, in our committee—our intelligence thing has been on a need-to-know. And it has worked very well. We have had no problem with it.

Mr. MILFORD. Yes, sir.

Mr. FLYNT. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Milford, your discussion with Mr. Cochran led me to believe that you thought that Mr. Schorr or somebody else may have violated the law, and that law was a rule of the House. Do you think that the rules of the House reach anybody but the Members and staff of the House—any citizen who is not either a Member or a member of the staff, the rules of the House are no law to him, are they?

Mr. MILFORD. Definitely, they are not, Mr. Hutchinson. As I pointed out earlier in testimony here, I'm not trying to punish Mr. Schorr or anyone else. This House has no jurisdiction over Mr. Schorr. And Mr. Schorr has broken no law that I know of. I am simply trying to get to the person that did break the law, that being the Member or staff member of this House, if it occurred, or a member of the executive branch, if it occurred there.

Mr. Schorr knows who did violate the law.

Mr. HUTCHINSON. Thank you.

Mr. FLYNT. Thank you, Mr. Hutchinson.

Mr. Milford, the committee may wish to recall you in executive session. If we give you adequate notice, would you respond to that invitation?

Mr. MILFORD. I would be glad to.

Mr. Chairman, I would ask permission to be able to, in the record, correct my grammar without changing anything in substance in the ad lib remarks made here.

Mr. FLYNT. I know of no case in which the gentleman misspoke himself. But of course we will accord you that privilege.

With the thanks of the committee, you may step down.

Mr. MILFORD. Thank you very much, Mr. Chairman.

Mr. FLYNT. Does any member of the committee have further questions?

With the thanks of the committee, you may step down.

[The following material, previously referred to, was received for the record:]

[From the Congressional Record, Mar. 18, 1976]

A PROPOSAL FOR A PERMANENT INTELLIGENCE COMMITTEE AND FOR PROTECTING
CONFIDENTIAL DATA WITHIN CONGRESS

(Mr. Milford asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. MILFORD. Mr. Speaker, today I introduced House Resolution 1095, a resolution to establish a permanent House Committee on Intelligence and to protect the unauthorized release of confidential data and information within Congress.

Most people will agree that an efficient intelligence effort is vital to our national defense. Most will also agree that intelligence activity, by its very nature, is a highly secretive business. This Nation simply cannot publish its intelligence plans and activities in the daily newspaper. Furthermore, it is a well known fact that the ability to keep a secret is directly proportioned to the number of people who know the secret.

In past years, the general membership of Congress was content by allowing intelligence matters to be handled exclusively by a few key members on the Armed Services, Foreign Relations and Appropriations Committees. While every Member of Congress "technically" could gain access to any information in the classified files, this right was rarely pursued. Those Members of Congress who previously handled extremely sensitive matters usually had long years of service and considerable experience in dealing with intelligence matters.

Beginning in the 93d Congress, and accelerating rapidly in the 94th Congress, many reform measures were enacted that drastically altered past congressional practices. There emerged a new individual Member awareness, expanded Member participation in congressional processes and a diminishing of leadership controls and prerogatives.

While these new reforms greatly increased individual Member participation in the political process, they also presented a new and grave problem in the maintenance of national secrets and the oversight of intelligence activities.

The new liberated Members of Congress were no longer content to let the "old bulls" exclusively handle intelligence matters. As the hearings conducted by both the Senate and House Intelligence Committees clearly show, detailed congressional oversight has been noticeably absent during past years. Even the few senior Members who handled intelligence matters never really had the time and staff resources to question the agencies or followed their activities to the the extent needed.

The new freedom of the liberated Congress also presented some very serious problems for the nation concerning not only intelligence activities but also the maintenance of confidentiality of executive sessions. As stated earlier, security of secrets is directly proportional to the number of people that know the secret.

There are six committees in Congress that have jurisdiction over intelligence matters. Immediately, that means that 39 Members of Congress and over 100 staff members have access to the Nation's highest classified and most sensitive secrets.

In addition, rule XI(2)(e)(2) of the House Rules clearly gives any Member of Congress the right to examine any file, in any committee, in the Congress. Therefore, potentially, 411 more Members can have access to the Nation's most vital secrets.

This type of access, as a practical matter, makes it impossible for Congress to protect highly confidential or super sensitive information. Under article I, section 6 of the Constitution, any Member of Congress clearly has the right to say anything, his conscience dictates, on the floor of the House. This means that he can take the Nation's most closely held secret and read it to the world in a floor speech.

A small number of Congressmen have strong conscientious feelings against governmental secrets. They believe in a totally open society. They are strongly opposed to any form of intelligence gathering agencies. Furthermore, out of 535 Members of Congress, there exists wide and divergent opinions. What might

seem extremely important to the majority can be extremely offensive to a small minority or to a single Member.

Obviously highly secretive intelligence matters and the confidentiality of executive sessions cannot be maintained unless the will of the majority is respected by all Members. One dissenter, with strong conscientious feelings, can blow the works for the entire Nation. This greater exposure of intelligence secrets and individual Member access to executive session records increases the chances that data vital to national welfare will be revealed.

It is also no secret that a few Members of Congress have been guilty of "leaking" security information. The deliberate leaks are made for many reasons ranging from press favors and publicity to political motives and as a means of embarrassing the administration. Parenthetically, the administration also uses this despicable tactic to embarrass Congress.

By establishing a Permanent Select Committee on Intelligence and giving it exclusive oversight and legislative jurisdiction, Congress will make a quantum jump in responsibly protecting national secrets and maintaining firm control of intelligence activities. In the absence of strict secrecy, intelligence work is of negligible value.

THE PHILOSOPHICAL MAKEUP OF A PERMANENT INTELLIGENCE COMMITTEE

By overwhelming agreement, among both intelligence committees in the House and Senate, they concurred that Congress should have a Permanent Committee on Intelligence.

In order to successfully protect the vital national secrets that will be involved; in order to properly oversee the extremely sensitive national matters that will be involved; and in order to responsibly represent the will of the majority of the Congress; the selection of Members to serve on the Permanent Intelligence Committee must be made in an extraordinary manner.

From the outset, one fact is clearly evident and vitally necessary: "Every member of that Permanent Intelligence Committee must clearly hold the respect and confidence of a majority of the entire membership of Congress."

Of necessity, the general membership of the Congress is going to have to surrender some individual prerogatives and rights in order to succeed in creating an effective and responsible Permanent Intelligence Committee. Therefore, those committee members will be a select few that of necessity must garner the respect of the many.

There is another very important reason why the membership of this committee must be selected in a very special manner. In addition to the "confidence factor" there is also a very important "technical factor" involved.

Of necessity, this special committee must encompass a broad spectrum of knowledge. Members must have an expertise in military matters, foreign relation, business, science, space, agriculture, law, economics and transportation. Of supreme importance, all members of that committee must strictly abide by majority will.

It takes only one person to release a secret or reveal an intelligence plan. While individual members might have strong feelings against a particular situation, no one member should have the unilateral right to void the will of the majority of the committee or of Congress.

The present committees handling intelligence matters not only present a problem in securing confidential data but also present other difficulties. First, each committee tends to look at intelligence activities in the light of its particular field of expertise. For example, the Judiciary Committee would be very concerned about the legalities of activities, but would tend to give scant attention to military matters, economic matters, or agricultural intelligence. The Foreign Relations Committee would quite naturally be preoccupied with State Department matters, Armed Services Committee with military matters, et cetera.

In truth, and in fact, all of these fields of expertise are vital for good intelligence oversight and legislation. Only when these fields are viewed collectively can Congress formulate a balanced national intelligence policy.

Second, since—under the present system—any one of the six congressional committees can individually hold legislative or oversight hearings on intelligence matters, a balanced view is almost always lacking. The resultant legislative bill or oversight investigation will clearly be weighted toward the expertise of the committee holding the hearing.

THE FACTORS IN SELECTING COMMITTEE MEMBERS

If one were to ask a man on the street, or even most Members of Congress, to describe the functions of the CIA, an incorrect answer would most probably be forthcoming.

Almost everyone believes that the CIA is primarily a "James Bond" type of organization, or "cloak and dagger" agents that lead paramilitary operations in foreign countries, or "spies" that operate behind the Iron Curtain.

Very few citizens know that the CIA contains far more scientists than agents; that the CIA spends much more time analyzing foreign crop reports and economic conditions in foreign countries than they spend on clandestine or covert operations; and that the CIA has far more people now studying the industrial and technical capabilities of Iron Curtain nations than the total number of "spies" that have ever been employed by this Nation throughout its history.

In selecting a Permanent Committee on Intelligence, the "expertise" of the individual members will be very important. In the past, failures in congressional oversight can rationally be traced to this most important factor. Rarely will Members of Congress negligently fail to oversee their areas of responsibility. Apparent negligence usually develops because the Member of Members did not fully understand or recognize the technical matters involved and therefore did not fully realize the national impact.

Furthermore, Congressmen are political creatures. They react to the "now" feelings of people. They must. Otherwise, they cannot exist under the every-other-year election process. The real life situation faced by a Member of Congress is an antithesis of the problems that a member of a permanent intelligence committee must face.

Intelligence looks into the future. Good intelligence uncovers "tomorrow's headlines"—yet, the Member must keep them a secret, or seriously harm the national welfare. Good intelligence sometimes involves "taking chances," that can backfire and cause political repercussions. Good intelligence work means "staying out of the press and limelight," a blight to the existence of a Member of Congress.

Finally, the intelligence community of our Nation—unlike other Federal agencies—has no constituency. No high-priced lobby will be circulating on Capitol Hill, extolling the virtues of the intelligence community, or making campaign contributions on its behalf, or pushing its programs, or generating "grassroots support" back home in the Member's district. Intelligence is a necessary, sometimes nasty, and a secretive business that will neither help the Member in the House or in his district.

For these reasons, the selection and confirmation processes for Members that will serve on the Permanent Committee on Intelligence must be extraordinary. The individual Members must be sought after by the House. He must have a strong standing in his district because his service on the committee must be outside the limelight and in addition to other committee work. Most of all, the House membership, in general, must have firm confidence in the Members that are chosen to serve on the Permanent Committee on Intelligence.

TECHNICAL MAKEUP OF A PERMANENT COMMITTEE ON INTELLIGENCE

As mentioned earlier, this Nation's intelligence community is not primarily a "James Bond" organization. More appropriately, the community is a scientific, economic, agricultural, military and politically oriented—internationally—group. The intelligence community is just as concerned with the wheat crop in the Communist bloc nations as it is with their military weapons. The intelligence community considers the monetary policies and the economy of adversary nations to be of equal importance to their battle order. The political stability of an adversary nation can be more important than the total number of men under arms.

Therefore, the personal and technical expertise of the few members of a Permanent Intelligence Committee is very important. A broad spectrum, encompassing many disciplines must be understood and dealt with by the committee.

Furthermore, there is a vital need for a "cross-pollination" of information between the Permanent Intelligence Committee and other committees of Congress. Of primary necessity, the Armed Services Committee and the International Relations Committee need to have a close liaison with intelligence activities.

There is also a limited "need to know" on the part of the Government Operations Committee, Science and Technology, Agriculture Committee, Judiciary Committee, Banking and Currency, and others. Full access to all intelligence

activities, on the part of these various committees, would jeopardize the security of information vital to the national welfare.

Both cross-pollination of information and proper technical makeup can be solved in the selection process of the Permanent Committee on Intelligence. At the same time, the all important problem of discreet individual member selection can also be resolved.

In lieu of the usual Committee on Committees selection of members to serve on committees, it is suggested herein that the membership on the Permanent Intelligence Committee be selected in the following manner:

- First. The Speaker would nominate the chairman;
- Second. The Armed Services Committee would nominate two members;
- Third. The International Committee would nominate two members;
- Fourth. The Science and Technology would nominate one member;
- Fifth. The Banking and Currency Committee would nominate one member;
- Sixth. The Judiciary Committee would nominate one member;
- Seventh. The Public Works and Transportation Committee would nominate one member;
- Eight. The Government Operations Committee would nominate one member;
- and
- Nine. The Interstate and Foreign Commerce Committee would nominate one member.

The House leadership would designate the party ratio, following the proposed rule that "not less than one-third of the membership of the Permanent Intelligence Committee shall consist of Members of the majority party and not less than one-third shall be Members of the minority party."

While not specifically mandated in the House Rules, it is envisioned that the various committees, designated to supply members of the Permanent Intelligence Committee, would make specific recommendations to the Committee on Committees for nominees from their respective committees.

Recommendations from the various source committees would insure a good cross-pollination of information and would assist in the selection of the unnecessary expertise needed on the Permanent Committee on Intelligence.

PROTECTION OF CLASSIFIED AND CONFIDENTIAL DATA WITHIN CONGRESS

At the beginning of the 94th Congress, the landmark "sunshine rules" made Members of this body virtual heroes. The subsequent flurry of "leaks," unauthorized disclosures and unilateral declassifications have made the Congress appear to be a collection of fools.

No argument is made here against the open meeting rules. They were necessary and the rule should stand as written. However, there are some matters within Congress that must remain confidential and the rules must be amended to accomplish this goal in a responsible manner.

There is a desperate need to restrict the flow of confidential information that is considered in executive sessions of committees. Premature or unauthorized release of data or information, discussed in executive sessions, is often damaging to the national welfare.

Many Members of Congress have a fear that some committees might abuse the provision for executive sessions. Others will from time to time disagree with the need for keeping certain information confidential. A considerable number of Members, including this one, believe that Congress should be able to publicly release information that has been classified by the administration.

This resolution is designed to provide responsible means to protect individual Member interests and resolve the fears of all Members.

In this resolution, there is a strict prohibition against any Member releasing data or information that has been classified by executive committee session, or by administrative action.

Parenthetically, there is an "escape valve" or appeal procedure that is available to any Member who believes abuses of the executive session have been committed or information or data has been improperly classified by the administration. These procedures also clearly establish a method for Congress to declassify information that has been improperly given a secrecy stamp by the administration.

This resolution would establish a "Leadership Committee" consisting of the Speaker as chairman, the majority and minority leaders, majority and minority whips, plus the chairmen of the following committees: Armed Services, International Relations, Science and Technology, Banking, Currency and Housing,

Public Works and Transportation, Judiciary, Government Operations and Interstate and Foreign Commerce. The Leadership Committee would serve as the "court of last resort."

While the new rule would strictly prohibit any Member from unilaterally releasing confidential data—under penalty of expulsion, responsible procedures are established to protect every Member's concern. Generally, Members worry about two possible abuses of the people's right to know: First, improper executive sessions in the Congress, and second, improper secrecy classifications by the administration.

If a Member feels that data or information is being withheld from the public as a result of an executive session, he would appeal the committee's decision by the following procedure:

First. The Member would transmit a confidential letter to the Speaker identifying the specific information or data that he believes should be released and ask for a hearing before the Leadership Committee.

Second. If the Speaker fails to call a hearing to consider the Member's request, the petitioning Member can then solicit assistance from individual members of the Leadership Committee. If three or more members of the Leadership Committee request a hearing, the Speaker must convene the Leadership Committee for a hearing on the matter.

Third. The Leadership Committee decision will be final. If any Member feels that data or information has been improperly classified by the administration, he may obtain public release through the following procedure:

First. The Member would transmit a confidential letter to the chairman of the committee, having jurisdiction over the Administrative Agency that classified the material or data, identifying the specific material or data to be released.

Second. If the chairman fails to call a hearing to consider the Member's request, the petitioning Member can solicit assistance from individual Members of the committee of jurisdiction. If three or more Members of the committee of jurisdiction request a hearing, the chairman must convene the committee for a hearing on the matter.

Third. During the hearing, the committee of jurisdiction must consult with the appropriate Administrative Agency and obtain views and recommendations concerning the need to keep the data or information classified.

Fourth. If either the agency or committee of jurisdiction objects to public release, the petitioning Member may then appeal to the Leadership Committee under the same provisions as listed above for appealing executive session matters.

These procedures will protect the confidentiality of those matters that should remain confidential within Congress. At the same time, the procedures establish a responsible means of making sure that the public's right to know is not jeopardized.

The irresponsible release of confidential or classified information, by individual Members, reflects negatively on the integrity and reputation of all Members of Congress. Adoption of these procedures will put a stop to that practice.

Mr. Speaker, so that all Members may know the exact wording of the resolution, the following is the text of the resolution:

HOUSE RESOLUTION 1095

Resolved. That (a) clause 1 of Rule X of the Rules of the House of Representatives is amended by redesignating subclauses (j) through (v) as subclauses (k) through (w), respectively, and by inserting immediately after subclause (j) the following:

"(k) (1) Committee on Intelligence, to consist of eleven Members as follows:

"(A) two Members who are members of the Committee on Armed Services;

"(B) two Members who are members of the Committee on International Relations;

"(C) one Member who is a member of the Committee on Science and Technology;

"(D) one Member who is a member of the Committee on Banking, Currency and Housing;

"(E) one Member who is a member of the Committee on Public Works and Transportation;

"(F) one Member who is a member of the Committee on the Judiciary;

"(G) one Member who is a member of the Committee on Government Operations;

"(H) one Member who is a member of the Committee on Interstate and Foreign Commerce; and

"(I) one Member who shall be designated by the Speaker and who shall serve as chairman.

Members shall be selected for service on the basis of individual qualification and technical expertise. Not less than one-third of the membership of the committee shall be members of the majority party and not less than one-third shall be members of the minority party.

"(2) Foreign and domestic intelligence activities of the United States."

(b) Rule XI of the Rules of the House of Representatives is amended by inserting at the end thereof the following:

"Release of Information From Committees of the House

"7. No Member, officer, or employee of the House of Representatives may release any classified material within the possession or control of any committee or executive session transcripts of the committee relating thereto except in accordance with the following procedures:

"(1) Three or more members of the committee transmit a letter to the committee requesting that certain classified material and related transcripts be made public:

"(2) (A) The committee, after permitting the head of the agency of the United States which has classified such material to present to the committee his comments concerning the making public of such material, adopts a committee resolution recommending that such material and related transcripts be made public, together with a statement of its reasons for the recommendation; or

"(B) If the committee fails to adopt or consider such a resolution within the thirty-day period commencing upon the date of transmittal of the letter under paragraph (1), any Member may present a written petition to the Special Leadership Committee established under clause 7 of this Rule, requesting that it make such material and related transcripts public.

"(3) Within three days after the adoption of a resolution under paragraph (2) (A) or the presentation of the written petition to the Special Leadership Committee under paragraph 2(B), the committee shall transmit to the Special Leadership Committee, a copy of the classified material and related transcripts and a copy of any comments received from the agency which has classified such material.

"(4) The Special Leadership Committee, by a majority vote of its full membership, votes to permit such material and related transcripts to be made available to the public and directs the committee to do so.

"Special Leadership Committee

"8. (a) There is established a Special Leadership Committee consisting of the Speaker as chairman, the Majority Leader of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Whip of the House of Representatives, the Minority Whip of the House of Representatives, the chairman of the Committee on Armed Services, the chairman of the Committee on International Relations, the chairman of the Committee on Science and Technology, the chairman of the Committee on Banking, Currency and Housing, the chairman of the Committee on Public Works and Transportation, the chairman of the Committee on the Judiciary, the chairman of the Committee on Government Operations, and the chairman of the Committee on Interstate and Foreign Commerce.

"(b) The Special Leadership Committee shall meet at the call of its chairman or any three of its members.

"(c) The function of the Special Leadership Committee shall be to consider requests made pursuant to clause 6 that classified material within the possession or control of any committee of the House and related executive session transcripts of the committee be made available to the public, and, when appropriate, by a majority vote of its full membership, to direct the committee to make certain classified materials and related transcripts available to the public."

(c) The Rules of the House of Representatives are amended by adding at the end thereof the following new Rule:

"RULE XLV

"Punishment for Releasing Certain Classified Materials

"1. Any Member who releases any classified material within the possession or control of any committee or executive session transcripts of the committee

relating thereto other than in accordance with clause 7 of Rule XI shall be liable to expulsion by the House with the concurrence of two-thirds of its Members, or censure or such other punishment as the House may deem proper.

"2. Any officer or employee of the House who releases any classified material within the possession or control of any committee or executive session transcripts of the committee relating thereto other than in accordance with clause 7 of Rule XI shall be liable to censure or such other punishment as the House may deem proper."

Mr. MARSHALL. Call Mr. John M. Atkisson to the stand.

Mr. FLYNT. Mr. Atkisson, would you remain standing, please? You do solemnly swear the testimony you will give before this committee in matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ATKISSON. I do.

Mr. FLYNT. You may be seated.

Counsel will proceed.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. MARSHALL. Mr. Atkisson, would you identify yourself for the record?

TESTIMONY OF JOHN M. ATKISSON, FORMER COUNSEL, SELECT COMMITTEE ON INTELLIGENCE

Mr. ATKISSON. My name is John Atkisson, former counsel with the House Select Committee on Intelligence.

Mr. MARSHALL. And you are appearing at the invitation of the committee, Mr. Atkisson?

Mr. ATKISSON. I am appearing at the invitation of the committee. And Mr. Marshall, I would like to clear up one thing for the record concerning that very fact. In a brief colloquy yesterday between Mr. Bowers and Mr. Hébert, the impression was left, I believe, though not—I think not on purpose by either Mr. Bowers or Mr. Hébert, but I think the impression in the room was clearly that some staff members had been more cooperative than others with this committee, and that that was reflected in the fact that some of us had requested subpoenas. The fact is, as the committee well knows, that anybody who asked for a subpoena was virtually invited to do so by the staff of the Ethics Committee, because under the House rules one cannot be paid his travel expenses and witness fee if he is not subpoenaed. I am not one of those people who requested a subpoena. However that may be, a couple of Monday mornings ago at about 6:30 a.m., I received one, unceremoniously from a Federal marshal and attached to that subpoena was a \$50 check, which I would like to return to the committee. I cannot accept it for a number of reasons. One of them is that I am presently an employee of the House, and under the House rules I cannot be paid for my testimony, so I would like to return the check to the committee at this time.

Mr. FLYNT. Mr. Atkisson, isn't it a fact that you requested the subpoena because you did not want to bring certain documents without a subpoena being served on you?

Mr. ATKISSON. It is not, Mr. Chairman. As I explained to the gentleman—and I do not recall exactly who it was—who called me, initially, to ask me if I would appear without subpoena, I said "Yes, I certainly will." He said, "Will you produce documents without a subpoena?" and

I said, "That depends entirely on what you ask for. I reserve the right to object on grounds of relevancy." He could, after all, have asked for tax records, love letters and anything else. I certainly had no objection to bringing anything that had anything to do with this committee.

Mr. MARSHALL. Now, prior to appearing before the committee, you have received copies of House Resolutions 1042 and 1054?

Mr. ATKISSON. That is correct.

Mr. MARSHALL. You received copies of the rules of the House Committee on Standards of Official Conduct.

Mr. ATKISSON. I have.

Mr. MARSHALL. You received a copy of the investigative procedures adopted by this committee for this investigation.

Mr. ATKISSON. Yes, I have.

Mr. MARSHALL. Have you now received a copy of Chairman Flynt's opening statement?

Mr. ATKISSON. I have.

Mr. MARSHALL. Do you have any further prepared statement in writing that you would care to submit to the committee?

Mr. ATKISSON. I do not, Mr. Marshall. I had expected to make some comments on some of the testimony of yesterday. I see by the witness list this morning that my testimony has been allotted 15 minutes. I take it that that is not a measure of the interest in what I have to say, but I think in the interests of—in deference to Mr. Aspin, who is to follow me, I won't make any further remarks, but will be glad to answer any questions you have.

Mr. FLYNT. Mr. Atkisson, with your experience as former counsel for the Select Committee on Intelligence, I am sure you are as aware as anyone else that witness schedules are and of necessity must be flexible; that the schedule shown is a guideline only. And I am sure you were well aware of that fact, when you made the statement you just made.

Mr. ATKISSON. I'm aware of it, Mr. Chairman.

Mr. MARSHALL. Mr. Atkisson, have you produced documents pursuant to the subpoena?

Mr. ATKISSON. Yes, I have.

Mr. MARSHALL. Where are they?

Mr. ATKISSON. They are in your possession.

Mr. MARSHALL. All documents have already been turned over?

Mr. ATKISSON. That is correct.

I gave them to your staff Friday afternoon.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence, or classified information, information which may tend to defame, degrade or incriminate any person, I would appreciate your advising this committee of that in timely fashion, so that the committee can take appropriate action under the House of Representatives rules.

Mr. ATKISSON. I will do so.

Mr. MARSHALL. Mr. Atkisson, when did you first join the committee, and in what capacity did you first join the Select Committee on Intelligence?

Mr. ATKISSON. It was late in August of 1975. I don't know the exact date, but I think about the 20th. And I was hired as a counsel. I was 1 of about 10.

Mr. MARSHALL. And when did you leave the committee staff?

Mr. ATKISSON. When the committee disbanded, which was February 29 of this year.

Mr. MARSHALL. Now, as counsel for the select committee, were you assigned a particular area of responsibility?

Mr. ATKISSON. Yes. I worked almost exclusively on domestic intelligence. The staff was divided up into basically two task forces, one for international and foreign intelligence, and one for domestic. I concentrated on domestic.

Mr. MARSHALL. What precisely was your role in the domestic intelligence area; that is, what were your duties—without going into the domestic intelligence involved.

Mr. ATKISSON. It was chiefly investigative. That was true of all the counsel who were hired. We investigated various matters that were assigned to us. And then we were responsible later for managing and directing hearings on those subjects.

Mr. MARSHALL. Now, during the course of the time you were with the select committee, were leaks of classified information in the news media brought to your attention?

Mr. ATKISSON. I don't know what you mean by brought to my attention. I read things in the press, which the committee was at the same time dealing with, yes, and those have been alluded to by Mr. Bowers.

Mr. MARSHALL. Were any investigations initiated by any member of the committee or committee staff concerning the leaks of any classified information?

Mr. ATKISSON. Well, no formal investigation. I think the top staff people were at least curious. And questions were asked. But they came to no result.

Mr. MARSHALL. Following Mr. Schorr's January 28, 1976, television show, in which he exhibited a document which purported to be a draft of the select committee's report, was there any inquiry made among the committee as to the identity of Mr. Schorr's source?

Mr. ATKISSON. Not to my knowledge, no.

Mr. MARSHALL. Did anyone to your knowledge request such an inquiry?

Mr. ATKISSON. Well, I think as the committee knows, after that incident, a member of the House select committee, a Member of Congress, brought the matter up during the deliberations of the committee. As I recall, he requested an investigation. And Chairman Pike answered the question yesterday, which I believe explained that that suggestion didn't go anywhere.

Mr. MARSHALL. Do you know of any instances where the committee staff "declassified" documents which were received from other departments of the Government and which bore security classifications?

Mr. ATKISSON. No.

Mr. MARSHALL. Mr. Schorr has stated in an article in the Village Voice April 8, 1976, that he had possession of the select committee report on January 25, 1976. Did you give him this draft or copy of a draft?

Mr. ATKISSON. No, I did not.

Mr. MARSHALL. Did you give him any draft or any part of the text of a select committee report?

Mr. ATKISSON. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. ATKISSON. No, I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever surrounding the circumstances of the publication of the report or any part of it?

Mr. ATKISSON. I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. ATKISSON. No, I do not.

Mr. MARSHALL. At any time when you were with the select committee, did you divulge any part of the select committee report or draft of the report, or information before the select committee, to any member of the media?

Mr. ATKISSON. No, I did not.

Mr. MARSHALL. Do you know anyone who did?

Mr. ATKISSON. No.

Mr. MARSHALL. Where are you now employed?

Mr. ATKISSON. I am special counsel for the Oversight and Investigations Subcommittee of the House Committee on Interstate and Foreign Commerce.

Mr. MARSHALL. Were you so employed at the time the subpoena was served?

Mr. ATKISSON. Yes, I was.

Mr. MARSHALL. And how long have you been so employed in that capacity?

Mr. ATKISSON. I started there about 2 weeks after the Select Committee on Intelligence disbanded, so it would have been the middle of March.

Mr. MARSHALL. I think this point may be obvious, but let me clarify the record. You are, of course, an attorney admitted to practice law?

Mr. ATKISSON. I am, yes.

Mr. FLYNT. Mr. Price.

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. Just one or two questions, Mr. Chairman.

Did you work for the House before you were hired on the select committee?

Mr. ATKISSON. No, I did not, Mr. Spence.

Mr. SPENCE. Where did you work last?

Mr. ATKISSON. I was a practicing attorney in San Francisco, Calif.

Mr. SPENCE. Mr. Milford, I think, testified a little bit earlier that the staff seemed to be, I think he said, distrustful of intelligence agencies. Did you find that to be the case?

Mr. ATKISSON. Well, I heard that and was disturbed by it. I think that it is certainly a mischaracterization of the feeling that the staff shared. We were to some extent in a legitimate adversary role. We were investigators. And the people we were investigating did not want to be investigated, just as you might expect the people who are being investigated by this committee don't particularly enjoy it. So there was that adversary relationship. But I do not think "mistrust" is the proper characterization.

Mr. Milford, after all, was not a member of our staff.

Mr. SPENCE. Was not a member of what?

Mr. ATKISSON. Of our staff. And I don't know how he would know what the feelings were. I cannot think of any objective act which would point to what he calls mistrust of the agencies.

The adversary relationship was quite general.

Mr. SPENCE. Would he have to be a member of the staff to know what your attitude was, or the attitude of the staff? Couldn't he gather this from things he heard, or from talking to members of the staff?

Mr. ATKISSON. Well, if he did hear things or see things, I would like to know what they were. I know of no such evidence from my personal knowledge which would indicate mistrust.

Mr. SPENCE. That is all I have.

Mr. FLYNT. Mr. Teague.

Mr. TEAGUE. No questions, Mr. Chairman.

Mr. FLYNT. Mr. Quillen.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. ATKISSON, how many staff members did you supervise?

Mr. ATKISSON. I didn't supervise anybody.

Mr. QUILLEN. You had no secretary?

Mr. ATKISSON. We had support personnel who—

Mr. QUILLEN. You mentioned love letters. [Laughter.]

How many—I am serious—how many staff members did you supervise or work closely with? I know the job of a counsel to a committee.

Mr. ATKISSON. I worked closely with four people, one of whom is appearing today, Mr. Vermeir. The task force consisted of three others. But I did not supervise any of them.

Mr. QUILLEN. You worked closely with staff members, I believe you mentioned, in saying that Mr. Milford didn't.

Mr. ATKISSON. That is correct. I worked very closely with those four people, and I might say we, all of us, all 39 of us, worked very closely with one another. I note that this morning, and yesterday, a great deal was made of the fact that when the report was delivered to the members, no one could remember exactly who did it. That does not surprise me at all. We trusted each other. We didn't have any reason to remember who would do it. As a matter of fact, later that same day—the report was delivered, the 19th—I personally delivered some copies of the recommendations, which had the appropriate cover letter, advising members that it was confidential. But I do not expect anybody else on the staff to have remembered that I did it because there is nothing remarkable in that. We trusted each other implicitly, explicitly, totally, and we do today.

Mr. QUILLEN. You think "trust" is the word for handling intelligence information?

Mr. ATKISSON. I think it is indispensable, Mr. Quillen. I do not know how you can set up any kind of system that does not in some measure depend upon human trust.

Mr. QUILLEN. Trust is so important. But I think there are other reasons or other requirements that should trigger along with trust. In other words did you deliver or members of the staff deliver secret documents to people without them signing for them?

Mr. ATKISSON. No. The report, of course, was delivered. I had nothing personally to do with the delivery of the report. We did not ask members to sign for their copies of the recommendations. But then

the recommendations had no classified material in them. They were confidential simply because the committee had not yet voted on them. I know of no instance when classified material, classified documents, were delivered in that manner.

Mr. QUILLEN. I believe it has been testified even here this morning that reports were delivered by people who didn't know who they were, or who they were delivering them to. Now, the report did contain classified and secret information.

Mr. ATKISSON. Yes, I—

Mr. QUILLEN. Were signatures required when those reports were delivered?

Mr. ATKISSON. Well, I don't know. I didn't deliver the report, as I say.

Mr. QUILLEN. But you said "trust."

Mr. ATKISSON. Yes. I was talking about the staff.

Mr. QUILLEN. Members of the staff delivered these reports.

Mr. ATKISSON. Evidently so, yes.

Mr. QUILLEN. Well, there was a breakdown in procedures and requirements for handling classified material.

Mr. ATKISSON. Well, I don't know the exact procedure for delivering the report. To my knowledge, it was not specified before it was delivered. Perhaps it should have been. I don't think, frankly, for this committee's inquiry, that it matters very much. The reports evidently were not numbered, and a great deal has been made of that. To my knowledge, report with a number on it can be Xeroxed just as easily as one without a number on it. And so long as the newsman receiving it is unwilling to yield his personal copy, it is just not going to make any difference at all.

Mr. QUILLEN. Of course I disagree. I think the person delivering that information to the newsman is the person that we are trying to find his name or her name. Therefore, I think that it is important how material was handled.

Mr. ATKISSON. Well, I agree that it is important to know how it was handled. And I am not trying to detract from the committee's very legitimate inquiry into that. I am expressing my belief that these fine points do not matter very much. I believe, I genuinely believe, that our procedures were adequate to the occasion. And one need only look at what in fact happened. The leaks referred to in Mr. Bowers' statement of yesterday are evidently the product of a good memory. There were no document leaks per se, until the report itself. You have heard enough already, and I needn't go into it, that there is practically nothing that couldn't have been done, given somebody that wanted to give that report to Mr. Schorr, in either the executive branch or the legislative branch—given somebody with that intent, there is nothing I can think of that would have stopped it. The procedures, after all, which the Congress could adopt ultimately will reach a point of diminishing returns. You could subject every staff member and every Member of the House to a strip search every time he entered or left the premises of the committee. But then you would need somebody to police the searchers. And ultimately, these procedures would bring the work of the committee to a grinding halt. Indeed, the House Select Committee on Intelligence had quite enough trouble as it was, completing its job, and a remarkable job it was in my opinion, in the short time that it had.

Mr. QUILLEN. Were there any memos written between staff members?

Mr. ATKISSON. Certainly.

Mr. QUILLEN. Certainly?

Mr. ATKISSON. Yes.

Mr. QUILLEN. Did you bring your memos with you today?

Mr. ATKISSON. I supplied to the committee Friday afternoon one memo, yes.

Mr. QUILLEN. How many other memos are there, Mr. Atkisson?

Mr. ATKISSON. Well, in the Archives of the United States there may be hundreds or even thousands. I do not know. There were a couple of days sometime in February—as a matter of fact, I think it was right around the time that the ill-fated Village Voice piece appeared, when the CIA and a couple of representatives of the Justice Department swarmed over the committee room to pick up all the documents that it had supplied, and the place was quite literally crawling with people from Langley. And we, as a staff, were amazed, frankly, and we were told that that which we didn't want the CIA to take back, we should shred. And at about that time a line formed at the shredder, and it was a long one, and I have the sinking feeling that not everything was shredded, and I have the further sinking feeling that a century from now some earnest historian will be going over documents at the Archives and will find a message to myself to pick up eggs and milk and try to figure out how that fits into CIA intelligence of the 1970's.

There are thousands of documents which are sitting in the Archives as far as I know, unlogged, and many of them could well have been memos between staff members.

Mr. FLYNT. Would you yield at this point?

Are you telling us that you mingled your official records with your personal records?

Mr. ATKISSON. Well, that would be certainly not classified documents, no. But memoranda, copies of correspondence and notes on foolscap, yes, were mingled.

Mr. FLYNT. In other words, you frequently mingled your personal material with committee material?

Mr. ATKISSON. Well, I do not see anything very onerous in that. Yes, we did. I did, I should say. I do not know whether other people did.

Mr. FLYNT. Mr. Quillen.

Mr. QUILLEN. Mr. Chairman, in conclusion—let's go back to your word of "trust." You are from California?

Mr. ATKISSON. Yes, I am.

Mr. QUILLEN. You worked at the Capitol before coming here?

Mr. ATKISSON. No, I had not.

Mr. QUILLEN. How many of these staff members did you know personally prior to your employment as counsel?

Mr. ATKISSON. None.

Mr. QUILLEN. Would you give me the definition of "trust" in your mind, as to individuals?

Mr. ATKISSON. In 15 words or less?

Mr. QUILLEN. In one word, if you like.

Mr. ATKISSON. Well, that is a very difficult question. It is a feeling which comes of working in close and intimate quarters with people, and which derives from performance with honor.

Mr. QUILLEN. Mr. Atkisson, I do not know the staff members, and I am not saying you cannot trust them. But I have always found that trust comes with knowing and with working with them, which certainly is the working you would have in mind. And if there was any possibility of some member of the staff leaking that we would like to know. And that is the only purpose of this question. It is not to disprove what you are saying, or disbelieve what you are saying, but getting down to the facts that we might have something to hang our hat on, so to speak.

Mr. ATKISSON. I think there was a presumption of trust the very first day all of us went to work. Certainly there was no presumption in the opposite direction. I assure you that after 6 months of working with those fine 88 people, I trusted every last one of them.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Just what was your capacity with the committee?

Mr. ATKISSON. Counsel.

Mr. BENNETT. Counsel. You are the only counsel or one of several?

Mr. ATKISSON. No. There were, I think, about 10 of us.

Mr. BENNETT. Did you handle counseling them on secrecy matters?

Mr. ATKISSON. No, sir, I did not.

Mr. BENNETT. Who did that?

Mr. ATKISSON. Well, there were—we had a chief counsel, Mr. Aaron Donner, who I think will be appearing before this committee. He drew on the legal talents of various people on the staff for such questions. I do not recall offhand exactly who advised him most. But most of the lawyers at one time or another had some input on these questions.

Mr. BENNETT. Now, the next question I am going to ask you may be one you want to give in executive session. Do you have any belief or suspicion or information as to who might have leaked the document?

Mr. ATKISSON. I do not.

Mr. BENNETT. Were you involved in any way in giving legal counsel as to the way in which you removed the secrecy on the document?

Mr. ATKISSON. No; I did not personally.

Mr. BENNETT. Who did that in the committee?

Mr. ATKISSON. Well, I do not know who exactly—exactly who Mr. Donner and Mr. Field drew on for those opinions. Mr. Pike, who was here yesterday, I think, addressed himself to that very pertinent issue. There was no one person.

Mr. BENNETT. There was no one person on the staff who declassified documents.

Mr. ATKISSON. No; we did not have a secrecy expert on the staff.

Mr. BENNETT. You didn't?

Mr. ATKISSON. No.

Mr. BENNETT. And how many thousand classified documents did you have?

Mr. ATKISSON. I should say we did not have anyone with that title.

Mr. BENNETT. I'm talking about the responsibility, not the title. Who had the responsibility?

Mr. ATKISSON. No one person did. Most administrative decisions, policy decisions, were made among the chairman and members of the committee, and the chief counsel, Mr. Aaron Donner, and the staff director, Mr. Searle Field.

Mr. BENNETT. Well, in retrospect, I think you have to say something did happen that shouldn't have happened: The document was released. And you would agree that was not a fortunate action.

Mr. ATKISSON. I would agree completely. As Chairman Pike said yesterday, that particular publication hurt this committee badly, notwithstanding the fact that it may have helped the CIA.

Mr. BENNETT. Well, really, isn't the real question whether it helped or hurt the country, rather than the committee of Congress or an agency of the Government?

Mr. ATKISSON. Well, I don't believe personally, though I am not in any way speaking for committee policy—I don't believe personally publication of that document hurt the country. Indeed, I think it helped it. I'm only sorry that—

Mr. BENNETT. Following up on that—then you must have made an investigation of the secret documents and the classified documents which were released and made a judgment on each of those, or at least a substantial portion of them, to decide that the information made public would not be hurtful.

Mr. ATKISSON. I'm sorry, I don't understand.

Mr. BENNETT. You say you don't think the release of this document could have been hurtful to the country, and yet it contained classified information—I guess secret information.

Mr. ATKISSON. Mr. Bennett—

Mr. BENNETT. I would like to complete my question. You asked me to repeat it, so the question is, therefore I would assume, is it so, that you did look at the classification on a document, inquire about why it was classified, and come to the conclusion it should not be classified?

Mr. ATKISSON. The reason I am confused is that you are mixing apples and oranges. I am talking about the report. The report per se was not a classified document. However—

Mr. BENNETT. But it did contain information which was classified, right?

Mr. ATKISSON. I was just about to say that. I do not want to split hairs. I appreciate the fact that it contained classified information. But this document was fought over, argued over, long and hard, by the members of the House Select Committee on Intelligence. And there is a full record of that. And we as a staff participated in that. And the conclusion of that committee by a vote of 9 to 4 was that the document should be published and submitted to the House. I agree with that decision. I am not talking about any other documents. I am talking about that report.

Mr. BENNETT. Well, the report is a report which, it has already been testified, contained classified information. And when you put classified information in another document, you have to classify the whole document at the highest level of any information that is in it. That is the rule of classified documents. I presume you advised the committee of that, being counsel?

Mr. ATKISSON. I was not asked to render such an opinion, and had I been asked, I would not have rendered that opinion.

Mr. BENNETT. What opinion would you have rendered?

Mr. ATKISSON. Excuse me?

Mr. BENNETT. What opinion would you have rendered on that question?

Mr. ATKISSON. I would have rendered an opinion which pointed to the fact that the Congress of the United States is unique, and the Congress, if it wants to release information I believe has the constitutional right to do so.

Mr. BENNETT. Now, a moment ago you said that you didn't see how any useful purpose would have been served by numbering copies. And I presume you would also include in that getting receipts and signatures and times of release of documents. Is that correct?

Mr. ATKISSON. That is correct.

Mr. BENNETT. Now, wouldn't it be helpful if today we had a certain number of copies, as we do, and we had numbers on each one of those copies, we would be able to determine at least by selecting out, what copy was the copy.

Mr. ATKISSON. No; Mr. Bennett, I don't believe that is the case, because one of the copies you might have in your possession might have been Xeroxed.

Mr. BENNETT. Oh, but if you had proper security in your committee, that would not have been true, if you had a receipt, and could follow up the numbered copy to the person who let it be Xeroxed.

Mr. ATKISSON. If someone in the executive branch or a member, or for that matter a staff member, had physically provided a copy of the report to an individual, for a sufficient time to duplicate it somewhere else, I don't think it follows that whatever security may have surrounded the committee's Xerox machine would have prevented distribution of the report.

Mr. BENNETT. Now, have you at any time carried classified information to your home?

Mr. ATKISSON. Yes; I have.

Mr. BENNETT. What justification do you have for that?

Mr. ATKISSON. There is nothing wrong with it.

Mr. BENNETT. There is nothing wrong with carrying classified information home without putting it in a safe under the regulations of the U.S. Government?

Mr. ATKISSON. I carried classified information home to work on a draft which I thought would lead to the domestic section of the report. It never left my physical possession. I took it home to work on it, to type, make notes.

Mr. BENNETT. Did you sleep?

Mr. ATKISSON. As a matter of fact, on this occasion; no.

Mr. BENNETT. Are you stating that you never took classified information home when classified information was not on your body, when you were awake, or with you?

Mr. ATKISSON. Well—

Mr. BENNETT. I'm asking you a question.

Mr. ATKISSON. I'm attempting to answer it.

Mr. BENNETT. It is not very complicated.

Mr. ATKISSON. No; it was not on my body, but it was in one room where I was working. I may have—

Mr. BENNETT. And you were awake all the time when that material was in your home?

Mr. ATKISSON. Pretty nearly. I may have taken a brief nap very, very late in the morning, right in the same room.

Mr. BENNETT. Well, just for your information—I am not trying to be righteous at this point—I have been involved with secret information certainly the majority of my life, and I have never done what you have done. And I think I have a better reason to have secret information than you had. And I have never done it. I don't want to criticize you personally, because I think you did what you thought was the proper thing to do at the time you did it. And the surroundings in which you were, and the type of information that was given you probably justified that, in your mind. But I assure you that if Members of Congress, on the Armed Services Committee or any other sensitive committee, handled secret material in the way in which you testified here today, our country would be greatly hindered and hurt. Now it may not be anything you have said, or anything that was exposed by this report, is hurtful to our country. I don't know whether it was or was not. But you see, when you have a responsibility for a secret document or a classified document, it is not up to you to determine whether or not it is in the best interests of the country, at least not without a hearing.

You see, there is something faulty in what you have said with regard to secret material. And that is, that you feel that a majority of a committee of Congress can decide for Congress. Congress never said this was unclassified material. Furthermore, you decided that you, yourself, can use that classified information in a way which is violative of the rules of our Government. And that is assuming to one person, or at most to one committee, the disposition of secret material. And that is not Congress, because Congress did not decide that. And don't mix up that committee with Congress, because that committee is not Congress.

That is all I have to say to you.

Mr. FLYNT. Thank you.

Mr. ATKISSON. Mr. Chairman, may I respond?

Mr. FLYNT. Mr. Hutchinson.

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. Mr. Quie.

Mr. BENNETT. If I have any further time, I don't mind him responding.

Mr. ATKISSON. May I respond to the remarks of Mr. Bennett?

Mr. FLYNT. All right.

Mr. ATKISSON. Just briefly, Mr. Bennett—I don't disagree with what you are saying. Don't confuse me with the committee. I think the relevant inquiry is whether or not anything I did led to a leak. I did not decide to release any information.

Mr. BENNETT. You are not on trial here. You are here to give information about the general leak situation.

Mr. ATKISSON. I believe you were suggesting that I was arrogating to myself the decision to release information. And I was not.

Mr. BENNETT. No, no. I was saying to you you arrogated to yourself the decision to take home secret material which should not have been taken home. That is what I am saying to you. That is against the law of our country.

Mr. FLYNT. Mr. Quie.

Mr. QUIE. Mr. Chairman—I would just like to pursue this a little bit further.

What I am interested in has been involved in the questioning. But, you indicated it was not proper for somebody to permit Daniel Schorr to have the copy of the report, and that it was harmful to the committee; is that right?

Mr. ATKISSON. Yes, that is correct.

Mr. QUIE. And you felt that it was not harmful, however, for the country that Daniel Schorr would receive and print it in the Village Voice, available for people to see?

Mr. ATKISSON. Mr. QUIE, it was harmful to the committee, not because of the substance of the report; it was harmful to the committee because, as this committee well understands, it was a breach of procedures, obviously, and there was the implication that the Congress couldn't keep a secret. I don't think this committee has determined which branch of Government is responsible for this leak. But the appearances were awful. And the test of that came on the floor of the House a short time later, in the form of the Young amendment.

Mr. QUIE. But you did say that you felt that Daniel Schorr's receiving the report, and its being printed for other people to see was not harmful to the country?

Mr. ATKISSON. I did say that, yes, sir.

Mr. QUIE. You also indicated the only other leaks you knew of were leaks that came from good memories.

Mr. ATKISSON. Those are the leaks that are alluded to, and frankly, I do not remember them specifically—the ones alluded to in Mr. Bowers' testimony yesterday.

Mr. QUIE. You think it was improper for whoever did have the good memory and leak it to the press to do so?

Mr. ATKISSON. Certainly.

Mr. QUIE. And you think that that was harmful to the committee?

Mr. ATKISSON. Yes, I do.

Mr. QUIE. In the same way that the other——

Mr. ATKISSON. Yes, any leak created the appearance of a lack of security, hurtful to the committee.

Mr. QUIE. You think that those leaks were harmful to the country?

Mr. ATKISSON. Well, I would have to debate the merits. And I just do not recall exactly what they were. I think insofar as they were later contained in the committee's report, I would suggest that they were not harmful to the country. But I am just not that familiar specifically with what each one was.

Mr. QUIE. Now, I understand from your testimony you don't have any idea whether it was a member of the committee or a staff person who divulged that report to Daniel Schorr.

Mr. ATKISSON. I went further than that. I don't know that it wasn't the CIA.

Mr. QUIE. Yes. I mean any of those, or someone outside.

Mr. ATKISSON. Yes.

Mr. QUIE. The leaks that came from the memory of some individual, do you agree that that had to be either a member or a staff person?

Mr. ATKISSON. I do not. It could easily have been a member of the executive.

Mr. QUIE. That is all.

Mr. FLYNT. Mr. Mitchell.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. ATKISSON, I would like to point out at the outset, the good news is you are receiving more than your 15 minutes. But there is some bad news.

Well, what was your background in handling classified material prior to working with this committee? Had you had any experience at all?

Mr. ATKISSON. No, none.

Mr. MITCHELL. And did you recommend the declassification of any particular documents yourself in the domestic area?

Mr. ATKISSON. Yes, to the Justice Department.

We, in an effort to honor the agreement with the executive branch, wrote Justice in a confidential letter, a request—that is also in the Archives—I don't have it to refer to—but there was a request from the chairman of the committee to the Justice Department, asking that certain items be declassified. As I recall, Justice responded by agreeing with some and disagreeing with others. The makeup of that memorandum I had some input on, yes.

Mr. MITCHELL. Were you ever asked if you had leaked sensitive material? Did anyone pose that question to you during the course of your employment with the committee?

Mr. ATKISSON. No.

Mr. MITCHELL. Did you ever ask anyone who was responsible to you if they had leaked any sensitive material—any secretaries?

Mr. ATKISSON. No, I did not.

Mr. MITCHELL. Do you know of anyone that posed the question to anyone on that committee?

Mr. ATKISSON. Not specifically. There was wide speculation and I think just about everybody on the committee, and in the executive branch at one time or another, was the object of somebody's speculation on that staff. But I do not recall any specific instance of questioning people.

Mr. MITCHELL. You mentioned earlier that you feel the Congress of the United States has a responsibility to release classified information. Do you feel that all committees of the Congress have this responsibility or this privilege, and would you extend it one step further to all Members of Congress?

Mr. ATKISSON. Well, it is misstating my position a little bit. I agree with Chairman Pike. Chairman Pike's statement of yesterday, that the committee, with the proper jurisdiction over a subject area, should be able to file, as a committee print, with the House of Representatives, its report. And I think by appointing that committee, the House of Representatives, representatives of the people of the United States, are expressing their trust in the good judgment of the members of that committee.

Mr. MITCHELL. So it was just this particular committee that should have the privilege of declassification—not every committee of the Congress.

Mr. ATKISSON. Well, we were the only committee, to my knowledge, with that specific jurisdiction at the time.

Mr. MITCHELL. And individual Members of Congress you don't feel should have the privilege of declassification anytime they so desire, or thought it was justified?

Mr. ATKISSON. I think that no member of the House of Representatives should violate the House rules. He subjects himself to whatever the House may do to him in that instance. I think there probably ought to be rules of the House concerning such things.

Mr. MITCHELL. One final question, Mr. Atkisson.

You seem concerned that some of us were somewhat discouraged by the method of distributing the report. In fact, I think you stated it was not really all that important whether you kept track of who got what report and so forth. We are looking for a missing report. I know they can be xeroxed. But I think there should be some accountability at the outset. That is what we are trying to establish. If Mr. Bowers' characterization is accurate, do you feel that your delivery process was adequate for handling this classified information?

Mr. ATKISSON. I think it could have been better. But the question is whether or not, had it been better, anything would have been different. I don't believe it would have.

Mr. MITCHELL. But the fact that it was so disorganized that no one can recall who made deliveries to which office, the time they were made, no specific control system, copies of the draft contained no identification whatsoever, they were not numbered nor charged out so they can be accounted for, I would say that was a total lack of accountability, with some highly sensitive material.

Mr. ATKISSON. I think I have already addressed myself to that question.

Mr. MITCHELL. I have no further questions.

Mr. FLYNT. Mr. Cochran.

Mr. COCHRAN. I have no questions.

Mr. QUILLEN. Mr. Chairman.

Mr. FLYNT. Mr. Quillen.

Mr. QUILLEN. How many Xerox machines did you have access to in the Select Committee on Intelligence?

Mr. ATKISSON. **Only one that was working. I think there were actually two in there at one point, because one had broken down.**

Mr. QUILLEN. Only one that was working?

Mr. ATKISSON. Yes.

Mr. QUILLEN. Do you know specifically—and I want you to listen to this question—how many copies were xeroxed? I am talking about all versions. If you could break it down by version.

Mr. ATKISSON. I do not know.

Mr. QUILLEN. I am speaking of the report now.

Mr. ATKISSON. I understand. I just don't know that. I wasn't working in that phase of it myself. I have heard testimony to the effect that it was 19, something of that sort. But I didn't know that until yesterday.

Mr. QUILLEN. Mr. Chairman, may I ask the counsel a question?

Have you considered subpoenaing the Xerox bills of the committee so that we might pin down the number of copies made in conjunction with the testimony given yesterday as to the number that were printed?

Mr. MARSHALL. I would prefer to respond to that question, if I might, in executive session.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Marshall.

Mr. MARSHALL. Mr. Atkisson, with regard to the information, the documents you said you had produced pursuant to subpoena, was there classified information in those documents?

Mr. ATKISSON. Well, we are back to the definitional problem. There were in one draft that I submitted to you quotations in footnotes, some of which may have come from classified documents. I think most of them were among those that we had asked Justice to declassify. I do not have reference to that memo, or Justice's response. So I just don't know. In all probability, there are references in that document which came from classified documents.

Mr. MARSHALL. And in the document which you produced, were there some references which were sufficiently sensitive to have been eliminated from the select committee's final report?

Mr. ATKISSON. Yes. I am getting into an area where if the committee wants to know about the substance, I am going to have to ask for executive session.

Mr. MARSHALL. Not the substance at all. I am just asking were they sufficiently sensitive to have been eliminated from the select committee's final report?

Mr. ATKISSON. Yes, they were.

Mr. MARSHALL. All right. Now, at the time these documents were subpoenaed, the documents were in your possession at your home?

Mr. ATKISSON. That is correct.

Mr. MARSHALL. How did you happen to have documents at your home which made references to information sufficiently sensitive that it could not be included in the select committee's report of January 23, 1976?

Mr. ATKISSON. Let me describe the document that you are referring to. You are talking about a green tissue carbon of a letter which I dictated to the office of Michael Shaheen, then the liaison counsel for the Justice Department. In that letter there was a reference to a name. That letter was written before the committee realized the sensitive nature of the material it was asking for. It is to the committee's credit that when it realized the sensitivity of the information, it chose to abandon that particular investigation.

Mr. MARSHALL. You of course realized the sensitivity of the matter at the time you took it from the committee's space to your home, did you not?

Mr. ATKISSON. Yes; if I may describe how I got those documents—as I indicated a little earlier, late in February or early March, all of us were job hunting. Our duties at the select committee had ended. And we were using the committee as a message center. And the hours were leisurely. I came in late one morning, as I say, and found an incredibly chaotic situation, with CIA people and FBI people crawling all over the place, logging in documents, and binding up the work product of the committee to take them off, I presume, to the National Archives.

I took from my desk a folder of items that I deemed to be personal to me. And among those was that tissue carbon. I did not review what was in the file at the time.

Mr. MARSHALL. My question, sir, is in your judgment, based upon your experience, can a security system function and keep secret those matters which are sensitive when the disclosure depends upon the length of line to a Xerox machine, or a counsel's desiring to take that information to his home, after his duties are over, and after the select committee has disbanded?

Mr. ATKISSON. Well, Mr. Marshall——

Mr. MARSHALL. Doesn't that in effect make a mockery of the entire system?

Mr. ATKISSON. Mr. Marshall, there was not a leak from my having taken that document home.

Mr. MARSHALL. So far as you know.

Mr. ATKISSON. I know there has not been a leak of that document.

Mr. MARSHALL. I want to give you a full opportunity to explain your position. Is there any reason why you took that document home and kept it after your duties were over, given that sensitive information?

Mr. ATKISSON. Mr. Marshall, as I explained before, the documents were taken in an atmosphere of utter chaos, because the office was crawling with people from Langley. Now, I wish that I had shredded it, or turned it in to be logged in with the CIA materials on my desk, I was not aware specifically of the existence of that carbon. I became aware of it when I reviewed the materials in preparation for my appearance before this committee.

Mr. MARSHALL. Perhaps I misunderstand. But "crawling with people from Langley," gives the import of enemy agents about to overrun the committee's base. Aren't we all on the same ball team in this matter, particularly with regard to security information?

Mr. ATKISSON. No; I don't think we were on the same ball team. We are all Americans, that is true. But as I explained before, there was an adversary relationship in this investigation, and one that I think is quite proper. No oversight investigative committee of the House of Representatives can be anything else if it is to be effective. It frankly caught us by surprise. I don't know——

Mr. MARSHALL. You mean the CIA pulled a surprise raid on the committee?

Mr. ATKISSON. No, Mr. Marshall, I am not suggesting that, and you are overdrawing my remarks. I am saying that the staff was not prepared to come in the door and find that the secure area of the committee, where unauthorized personnel are not supposed to be, was crawling with all sorts of unfamiliar faces.

Mr. MARSHALL. I have no further questions.

Mr. FLYNT. Mr. Atkinson, you may step down with the understanding you are still under subpoena and may be recalled.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. FLYNT. The committee will stand in recess until 1:45 this afternoon.

[Whereupon, at 12:25 o'clock p.m., the committee was recessed to reconvene at 1:45 o'clock p.m., the same day.]

AFTERNOON SESSION

Mr. FLYNT. The committee will come to order.

The committee will now hear from Congressman Les Aspin, our colleague from the State of Wisconsin.

Mr. Aspin, would you rise and be sworn?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ASPIN. I do.

Mr. FLYNT. You are Congressman Les Aspin.

**TESTIMONY OF HON. LES ASPIN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WISCONSIN**

Mr. ASPIN. Yes, sir.

Mr. FLYNT. A Representative from the State of Minnesota.

Mr. ASPIN. Wisconsin.

Mr. FLYNT. I am sorry.

Mr. ASPIN. Close, almost. All those midwesterners look alike?

Mr. FLYNT. You were a member of the Select Committee on Intelligence?

Mr. ASPIN. Yes, sir.

Mr. FLYNT. During the entire time of the life of that Select Committee?

Mr. ASPIN. Only after the time when Mr. Pike was appointed chairman. I was not on the original committee under Mr. Nedzi. I came on the committee in August when the committee was reconstituted.

Mr. FLYNT. By action of the House?

Mr. ASPIN. Yes, sir.

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Mr. Aspin, you are appearing here at the invitation of this committee.

[Witness nodded his head.]

Mr. MARSHALL. All right, sir. Prior to appearing here you have received a copy of H. Res. 1042 and 1054.

Mr. ASPIN. Yes, sir.

Mr. MARSHALL. As well as a copy of this committee's rules, investigative procedures and a copy of the chairman's opening statement.

Mr. ASPIN. Yes.

Mr. MARSHALL. All right, do you have a written statement which you would like to give the committee at this time?

Mr. ASPIN. I do not.

Mr. MARSHALL. Do you have any oral statement you would like to present to the committee at this time?

Mr. ASPIN. No, I do not.

Mr. MARSHALL. Mr. Aspin, during the time you were a Select Committee member did you find that the security procedures and regulations which were adopted by the Select Committee were followed with regard to handling of classified information?

Mr. ASPIN. I think that they were. I can't offhand say of examples where they were not.

I am not familiar with the procedures so much that was going on inside of the committee staff, but more the relationships with the members on the committee.

Mr. MARSHALL. Was it brought to the committee's attention, or to your attention, that leaks of classified information were occurring during the course of the Select Committee's work in preparing the final report?

Mr. ASPIN. I think everybody on the committee was aware of that, yes, sir.

Mr. MARSHALL. Was any action taken by the committee or any individual member or any staff member to determine what the source of those leaks were?

Mr. ASPIN. No; nothing specific, although there was a great deal of discussion about how this was not helping the committee, and the chairman, I believe explained on several occasions that he was unhappy that the leaks were occurring.

Mr. MARSHALL. So far as you know, the identity of the leaks were never identified?

Mr. ASPIN. That is right.

Mr. MARSHALL. Now, on January 28, 1976, Mr. Schorr appeared on television and exhibited what appeared to be a draft of the Select Committee's report. Are you familiar with that incident?

Mr. ASPIN. I have heard about it. I didn't see the actual TV report, but yes.

Mr. MARSHALL. Following that TV show, did the committee take any action to attempt to identify the source of that particular leak?

Mr. ASPIN. There was one point at which a motion was made by one of the members that we should form a subcommittee to look into it, and I can't remember exactly when that occurred. In any case, the motion was not approved by the committee.

I think that was after that, I can't remember the exact date that that occurred. But I think the record would indicate when that had happened.

Mr. MARSHALL. Mr. Aspin, let me for the record request that in the event I ask you a question, and the response calls for anything which transpired during executive session of the select committee, or the response calls for the substance of any classified information, or any information which would tend to defame, degrade, or incriminate any person, would you please advise the committee so it can take appropriate action under House rules?

Mr. ASPIN. OK, fine.

Mr. MARSHALL. Do you recall whether the committee discussed why no action, final action was taken with regard to identifying the source of information from Mr. Schorr?

Mr. ASPIN. At the time of the discussion that we had, I think it was talked about, but I think largely with the thought that the problem was doing anything worthwhile. That any attempt to find out who had leaked the information or where the leaks had occurred would be futile, and might actually result in some kind of a witch hunt, and I think those were the reasons why there was no action taken.

I don't think that it was a lack of desire to do something about stopping the leaks, it was a lack of anybody having any very good idea of what could be done that would be constructive, and successful.

Mr. MARSHALL. Now, the evidence before this committee is that the first complete report of the select committee was dated January 19, 1976.

Mr. ASPIN. Yes, that is correct.

Mr. MARSHALL. That changes were made in that report.

Mr. ASPIN. Yes.

Mr. MARSHALL. That another report, changes were made in that draft.

Mr. ASPIN. Yes, sir.

Mr. MARSHALL. And that another draft dated January 23, 1976, became the final report of the select committee.

Mr. ASPIN. That is correct.

Mr. MARSHALL. Is that correct? Now, I take it you were a recipient of copies of these drafts as they were being circulated.

Mr. ASPIN. That is correct.

Mr. MARSHALL. Were there any security marks or numbers to the drafts so there might be some control system set up?

Mr. ASPIN. No, sir.

Mr. MARSHALL. Was that ever discussed by the committee, to your knowledge?

Mr. ASPIN. No, sir.

Mr. MARSHALL. Was there any indication on the face of any draft you received that it contained classified information?

Mr. ASPIN. No, sir. There was, I think, a covering letter which came with the January 19 draft which said, in effect, that this was a draft, and was not to be given to, I can't remember the exact wording of it, but the net effect of it was it should not be given to unauthorized people.

Mr. MARSHALL. Did you retain a copy of that letter?

Mr. ASPIN. I don't know if I did or not. If I did, you have it, because your people came and took everything I had.

Mr. MARSHALL. All right. Now are you familiar—

Mr. FLYNT. Excuse me, just a minute. I hope they didn't take them: I hope that you gave them to them.

Mr. ASPIN. Yes, that is right. That is correct.

Mr. MARSHALL. I was interpreting taking in a very friendly fashion.

Mr. ASPIN. Yes.

Mr. MARSHALL. Mr. Aspin, are you familiar with any circumstances surrounding the disclosure of a portion of the report or draft of the report to the Reuters News Agency?

Mr. ASPIN. Yes, sir. The people that had, at one point, that week between the January 19th, and the January 23d, you know, when we were working off of that particular draft, a story appeared and I think it was in the New York Times, I don't remember, but a story appeared somewhere saying, in effect, that the CIA was using newspaper reporters as cover for their agents, and quoting the House committee report, draft report to that effect.

After that appeared there was a lot of scramble, and some people from Reuters called our office asking if we knew, you know, knowing that I was on the committee, asking if we knew what the report actually said. And we—I—or a member of my staff did give the Reuters people the particular pages, the two pages that did mention the Reuters incident. This was after it had already appeared in the New

York Times, and to give Reuters the information as to what it was they were being accused of.

Mr. MARSHALL. Did you actually examine the two pages that were given to Reuters before they were given to Reuters, or did you find this out after the fact? That is after they had been given?

Mr. ASPIN. I can't remember the exact sequence of it, but it was, it was either right after or at the time.

Mr. MARSHALL. Was there anything in those two pages, and I am not asking about substance, I am just inquiring about the nature of it, was there anything in those two pages which was disclosed to Reuters that would indicate, that was different from what appeared in the New York Times?

Mr. ASPIN. No, I don't think so. The New York Times had it accurate.

Mr. MARSHALL. There is evidence before the committee that these were three pages rather than two pages.

Mr. ASPIN. I thought it was two.

Mr. MARSHALL. Was the information in those pages, whatever the number was, classified information?

Mr. ASPIN. No, I do not believe it was.

Mr. MARSHALL. Now, did you disclose a portion of any draft to anyone outside of the committee?

Mr. ASPIN. Yes, sir. On the—after the report was given to the members of the committee on the 23d—well, no, not everybody got it on the 23d. But the report, after we had finished the draft report, going over it and making whatever corrections the committee voted to make, we voted, to finish the report and to report the report to the full Congress, to file the report, and that was the vote on Friday, the 23d.

At that time a new draft or a fresh draft, a clean draft was going to be made available to members of the committee and I waited around the office that night waiting for the draft to come because I wanted to take it home and read it over the weekend, and I think it must have been, it was late by the time the draft arrived. They came up and collected the old draft, the staff members came up and collected the old draft and said they would take it down and make the necessary changes and bring it back, and it arrived somewhere late, 6:30, 7 o'clock, sometime like that, and I took the draft and went home.

The next morning I got a call from Mitch Rogovin who is the counsel for the CIA in this thing, and the focal point for the executive branch's coordinated efforts for the executive branch in the CIA or in the whole investigation, and he said that he wanted, would like to have a copy, that he had asked Searle Field for a copy and Searle Field had told him no, he couldn't have his copy.

Mr. MARSHALL. Mr. Field was the staff director of the select committee?

Mr. ASPIN. Mr. Field was the staff director, and he said he couldn't get Searle Field's copy, or a copy from Searle Field, and he wondered if he could borrow my copy, and I said yes, he could.

He said he would send somebody over to get it, and he sent a driver over, and he took it about, oh, I guess about 10 o'clock in the morning, and then returned it about 4 o'clock that night, or that afternoon.

Mr. MARSHALL. Did Mr. Rogovin tell you why he was unable to obtain a copy from Mr. Field?

Mr. ASPIN. No; but by that time relations had been so completely strained between the staff of the committee and between Mr. Rogovin that it was, it could have been any number of things. It could have been Otis Pike told Searle Field not to give Mitchell Rogovin a copy; it could have been that Searle Field, when Mitchell Rogovin called, Searle Field just on his own told Mitchell Rogovin to go soak his head.

Relations were by that time, to say the least, strained, and any kind of cooperation and atmosphere of trying to work out an accommodation, the whole atmosphere was very bitter at that point.

Mr. MARSHALL. Did Mr. Rogovin state he had contacted Mr. Pike, the Chairman, to see if he could obtain a copy from him?

Mr. ASPIN. No; he just talked about Searle Field.

Mr. MARSHALL. Do you know how Mr. Rogovin happened to select you as 1 of 13 persons who were members of the committee?

Mr. ASPIN. No; except we had worked together on a number of things to try to work some compromise in committee business before, and in particular some of the matters having to do with the Secretary of State and potential citing of the Secretary of State, and we were able to work together before, and it was still my hope, at that point, that we could work out a draft of the committee report that both the committee would want to issue and the CIA would not have objections to.

There was no reason substantively in this whole issue why we couldn't have had a draft, a report out of that committee that said everything that the committee wanted to say, and leave out the specifics that the CIA and the executive branch wanted to leave out. Substantively there was no reason why it couldn't have been done. Politically it turned out there was every reason why it couldn't have been done. And at that point it just was impossible politically to compromise and I think Otis Pike was, and not without some reason, at that point extremely antagonistic toward the agency.

He thought they were nitpicking, that they had come up with 150 different objections, and things that he thought were minor, they were stalling and delaying and just trying to nitpick the report, rather than concentrating on where the main problem was.

The atmosphere was very bad. But, you know, if two groups of people had sat down without that whole rancorous atmosphere, there is no reason why it couldn't have been done, but it turned out to be politically impossible to do.

Mr. MARSHALL. At the time——

Mr. FLYNT. Would you yield?

Mr. MARSHALL. Certainly.

Mr. FLYNT. Let me ask a question at this point.

As I interpret what you are saying, that in making that available to Mr. Rogovin you were seeking to reconcile differences which had occurred that you thought could have been and should have been avoided?

Mr. ASPIN. Yes, sir, and it was still possible to do that, you see, because when we voted on it, on Friday to issue the report, we left open the possibility by saying that any further changes which were mutually agreed upon by Mr. McClory and Mr. Pike, the committee gave them authority to go ahead and make those changes.

So it was my hope that Mr. Rogovin would look at this report on Saturday. I knew we didn't have much time at that point, but if he had maybe two or three major objections to the way the report was in shape on the 23d, he could have gone to Mr. McClory and said can you try and talk Otis Pike into making these changes and possibly it could have still been worked out.

Mr. MARSHALL. At the time you delivered the copy of the draft to Mr. Rogovin did you feel you were acting contrary in any way to the committee rules?

Mr. ASPIN. No; nothing had been said at the committee meeting or to committee members that the CIA or Mr. Rogovin was no longer on the authorized list. He was given the copy of January 19. That we all knew. There was nothing said at the meetings to indicate that the chairman was so angry with Mitch Rogovin that he didn't want him to get any copy, and the only thing I heard from Mitch Rogovin was Searle Field had refused to give him his copy.

Mr. MARSHALL. Now, going back to the leak on the Reuters Agency by the person, I say leak advisedly just for a group term, was that, in your judgment, a violation of the select committee rules?

Mr. ASPIN. I don't think so. It was not that Reuters were going to use the information. The information had already been used against them. They were just interested in knowing what information there was against their position; in other words, what did the report say about them, so they knew what the brouhaha was about.

Mr. FLYNT. Excuse me. Rightly or wrongly, at that point what you were doing was giving the person named in the report something which had already, well, I wouldn't say rightly or wrongly there, but had already become part of the public domain having been published accurately.

Mr. ASPIN. Yes, sir.

Mr. MARSHALL. Based upon your work as a select committee member, did the January 23 draft which was adopted as the committee report, select committee report, contain information from classified documents?

Mr. ASPIN. It contained information from classified documents, yes. But, it did not contain any information that I did not think was proper—that needed to be classified. It did not contain classified information that I thought should have been left out.

I voted to release the report and to file the report and to make the report public.

Mr. MARSHALL. Given the fact that the report did contain information, that is the draft of January 23 did contain classified information, could you tell us what steps the committee took to familiarize itself with the reasons for the classification by any department of the Government in order to make a decision that this should no longer be classified?

Mr. ASPIN. All right. First after the January 19th report was made available, draft was made available to members, the CIA, which also got a copy of the draft, it had sent it throughout the executive branch and received a number of different reports from various agencies in the executive branch saying this is classified, this is classified, so they had a long list of things that they wanted to, changes that they wanted to see made in the report.

The first step was to, I think the first step was Otis Pike asked the people from the agency to sit down with the committee staff and work out any changes that could be mutually agreed on between the staff of the committee and the people from the agency.

When that was done, that still left a rather large number that the two could not resolve, and on that point the committee just went through item by item, and tried to determine whether, in fact, there was a case for the matter being classified or not being classified.

Mr. MARSHALL. And the committee then made a decision as to whether it should or should not go into the report?

Mr. ASPIN. Yes. And they voted on the matters as individuals. Some of them they voted to delete, most they voted to keep in.

Mr. MARSHALL. Mr. Aspin, it has been said that hind sight is always 20:20. Looking back to your experience as a committee member, do you think that is a satisfactory means of determining what information should be declassified?

Mr. ASPIN. I don't know. It's a very tough question which eventually, I guess, Congress is going to have to resolve, and I don't know what the answer to it is as to what is Congress' procedures for declassifying information.

Clearly anything that the Congress wants declassified and the executive branch wants declassified can be declassified and that's the system we have now. But suppose there is a difference between what a Committee of Congress, as what would usually happen is some Committee of Congress, and the executive branch disagree on how the thing, whether the information ought to be classified or whether the information is important that the public know and it's not that important to be kept classified.

I have no very good solution. I know what was proposed in the Senate bill is when that happens you go to a closed meeting of the Senate and the full Senate votes as to whether the information should be classified or not.

I don't know whether that is a practical solution or not.

Mr. MARSHALL. At the time the select committee adopted the report on January 23, 1976, did you consider it at that time a document which could be made public?

Mr. ASPIN. I didn't, no.

Mr. MARSHALL. Was that because there was classified information in it?

Mr. ASPIN. No, it's just that it had not yet been filed, and would not yet be released.

Mr. MARSHALL. Now, the committee entered into an agreement with the executive branch on or about October 1, 1975, for setting out some circumstances or the conditions under which documents might be declassified or dealt with if there was some dispute. Are you familiar with that agreement?

Mr. ASPIN. Yes.

Mr. MARSHALL. Was it ever reduced to writing and signed by the various parties?

Mr. ASPIN. I never saw it in writing. I don't think it was in writing. It was an agreement whereby in order to get particular information from the executive branch the committee voted—I voted against it, I thought it was a very bad move—the committee voted before anything

would be released they would get the approval—get the OK of the President, and if the President did not give it we always had the option of taking the matter to the courts.

It arose out of a dispute we had over the release of particular information concerning the Middle East war. No need to go into it in detail. But what happened was that there was a disagreement about some information which the committee had released.

The executive branch said it was classified, the committee said they did not see how anybody could rationally say it was classified, so the executive branch said thereupon the committee would get no information and the stalemate ensued, and the only way to break the stalemate was when the committee agreed to the ground rules established about what was to be released and what was not to be released.

Mr. MARSHALL. Did that agreement apply to the final report?

Mr. ASPIN. That was the \$64,000 question. My view was that it did not apply to the final report.

Mr. MARSHALL. Did the agreement ever mention the final report?

Mr. ASPIN. Never mentioned the final report. None of the discussion concerned mentioned the final report. We went back and looked over the transcript of the discussion in the committee when we accepted it, and nobody thought about the final report. I wish now I had thought to raise the question.

Mr. MARSHALL. Was the judgment of the committee that it did not apply to the final report?

Mr. ASPIN. I guess so. My view was I was against the agreement to start with, and my view was the agreement did not apply to the final report.

Mr. MARSHALL. Did the committee ever discuss that specifically as to whether it did or not?

Mr. ASPIN. No, not until the issue came up, you know, much later, and we were in the process of writing the final report. That is when it came up.

Mr. MARSHALL. Mr. Schorr stated in an article in the Rolling Stone on April 8, 1976, that he had possession of the select committee report on January 25, 1976. Did you give this report or a draft of any part of the report to Mr. Schorr?

Mr. ASPIN. No, sir.

Mr. MARSHALL. Or to any other person?

Mr. ASPIN. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. ASPIN. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever concerning the circumstances surrounding the publication of the select committee report or a draft or any part of it?

Mr. ASPIN. No, I don't.

Mr. MARSHALL. Do you know of anyone who did?

Mr. ASPIN. No.

Mr. MARSHALL. Did you give the report or make any further report available, part of the report available to anyone outside of the select committee other than what you have testified to about Mr. Rogovin?

Mr. ASPIN. No, only to Mr. Rogovin.

Mr. MARSHALL. Do you know anyone who did?

Mr. ASPIN. No.

Mr. FLYNT. Mr. Teague?

Mr. TEAGUE. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. I have nothing.

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. No questions.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. ASPIN, you received a telephone call from the gentleman from CIA, what was his name?

Mr. ASPIN. Rogovin.

Mr. QUILLEN. Did you recognize his voice?

Mr. ASPIN. Yes.

Mr. QUILLEN. He said he was going to send a courier after the document?

Mr. ASPIN. Yes.

Mr. MARSHALL. Did the courier identify himself?

Mr. ASPIN. He showed me identification which identified him as a CIA employee.

Mr. MARSHALL. Did you later talk to Mr. Rogovin about the report?

Mr. ASPIN. Not until a couple of days later. Well, the last time, the only time I talked to Mr. Rogovin about it afterward was sometime after the article had appeared in the Village Voice, and after the Schorr article appeared in the Village Voice Mitchell Rogovin called me and he said, "Oh, by the way, does your copy of your report have pages"—and I think it was pages 248 and 249, and I said, "I don't know, let me go and look." And I went back to the safe and got the report out and looked at the pages, and said, "No, I haven't." So I went back to the phone and I said, "No, my report doesn't have page 248."

He said, "No, I know when you sent it over for us to Xerox it, for us to have, we noticed when we were Xeroxing it you didn't have 248 and 249. The person down here in the Xerox room called me in the middle from Xeroxing it and said it's missing pages 248 and 249, and he says the reason why that is important is because the Dan Schorr copy, which appeared in the Village Voice, has pages 248 and 249. In other words, they have some text there we didn't have."

I said to Mr. Rogovin, "Well, that eliminates the biggest suspicion I had, because I thought you had leaked the report to Dan Schorr."

He said, "Well, that eliminates the biggest suspicion I had, because I thought you had leaked the report."

Mr. QUILLEN. You are satisfied the report did get to Mr. Rogovin.

Mr. ASPIN. Yes. I am satisfied it is not the report that got to Dan Schorr, because those 2 pages were missing from it. I really, up to that point, thought the most likely occurrence was somebody in the executive branch—they can make copies, Xerox machines are very quick, you can make an awful lot of copies in a big hurry. And there had been a copy and somehow somebody over there got to it. But if it got off that version it couldn't have been, because those 2 pages were missing.

Mr. QUILLEN. The pages you gave to the news—you are on the Armed Services Committee.

Mr. ASPIN. Yes.

Mr. QUILLEN. From the testimony we have had—everyone knows any document containing any classified or secret material, the whole document itself is classified.

Mr. ASPIN. Yes.

Mr. QUILLEN. In releasing those 2 pages, as you referred to it, did that at all occur to you, that rule?

Mr. ASPIN. That is one of the things which the Pentagon likes to do, which is illegal. What you have to do in order to classify a document is to bracket things on the document which are classified. You cannot just put a secret stamp on the top of a piece of paper and say you cannot give any of this. You have to decide what is secret and to bracket the words or the numbers or whatever it is in the piece of paper. And you can go back to the Pentagon and say, "Look, this is illegally classified. Tell us what is secret and what is not secret." You cannot just say this report is secret and then an innocuous introductory paragraph cannot be made public. That is not right.

So in the first place, that report was never stamped "Secret" so nobody knew what was secret and what wasn't secret. It was the opinion of the committee staff which wrote it that none of it was secret. Some votes of the committee later did delete some things, and there were some changes made. But you cannot just say everything is secret in that document.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. You were a career man in the Navy. How long were you in the Navy?

Mr. ASPIN. In the Army, sir. Two years—a little more.

Mr. BENNETT. I was going to say you exceeded me, but I very much exceeded you. Were you involved in secret materials there?

Mr. ASPIN. Yes; I was working in the Pentagon at the time.

Mr. BENNETT. Well, regardless of your opinion as to whether or not they legally classified the material, isn't it the law that when a document is classified, that all its contents are classified until declassified?

Mr. ASPIN. Yes. But this was never classified.

Mr. BENNETT. You mean there is no classified material in the report at all?

Mr. ASPIN. There is no stamp on that report which says that that is classified.

Mr. BENNETT. There is no stamp on the report because you had nobody to classify that.

Mr. ASPIN. That is right.

Mr. BENNETT. But the material you put in the report came out of classified material.

Mr. ASPIN. But that was the dispute, as to whether in fact it was classified or whether it was not classified.

Mr. BENNETT. We have had other testimony here there was classified material in the report. And you are telling me you don't think that is so.

Mr. ASPIN. No; I don't think that is so.

Mr. BENNETT. You don't think any classified material was in the report.

Mr. ASPIN. I don't think so, no. I think that report as written was—did not contain classified information, no.

Mr. BENNETT. Well, that is the first testimony we have had like that here today. I guess that is something we should check.

Mr. ASPIN. You see, that was the whole dispute—is the dispute about whether it was or whether it wasn't.

Mr. FLYNT. The Chair will announce that we are going to have a series of votes on bills which are up under suspension. The first vote will consume 15 minutes. The subsequent votes will consume 5 minutes each. At approximately 10 minutes from now, we will suspend. The members, of course, are at liberty to go prior to the expiration of the 10 minutes from now if they so desire. But 10 minutes from now the committee will recess.

Mr. BENNETT. Recess and come back after the last vote or quit altogether?

Mr. FLYNT. Excuse me—strike the word “recess”. The committee will suspend and return after the vote on the last suspension.

Mr. BENNETT. Well, you are the first person that has testified that in your opinion nothing in this report came out of classified documents.

Mr. ASPIN. Did you ask Otis Pike? I would be surprised if he thought any information in this thing was classified.

Mr. BENNETT. Certainly the impression I have received is that the report contained material which came from classified documents.

Mr. ASPIN. That is true.

Mr. BENNETT. Well, how do you justify saying it is not classified?

Mr. ASPIN. Material can come from documents which are classified, which in itself is not classified. I mean all—a lot of information in that report came from documents which were stamped “Confidential”, “Secret,” “Top Secret.” But the question is whether the information as it appeared in the report was classified or not.

Mr. BENNETT. You don't think a member of Congress or a committee of Congress has the power to determine that you can take things from classified documents and put it in a report and thereby declassify it.

Mr. ASPIN. To give an example, when the House Armed Services Committee writes its report on the defense authorization bill, everything in that report, the basis for that report was the classified information that was sent over from the Pentagon. But they summarized it and put it in a way in which it is no longer classified.

Mr. BENNETT. Oh, yes. But there was a process arrived at in putting it in the report. In other words, it was passed upon by those who have to do with keeping the secrecy of our country, and therefore it is declassified in the final report by the officials who classified it to begin with. That was not done by your committee, was it?

Mr. ASPIN. No. What I am saying is the information in the report did not contain classified information, although it was based on classified documents that came over. Yes, of course it was based on that. That was the information. But I was convinced that it did not contain classified information.

Mr. BENNETT. I certainly think we ought to have some more witnesses come in and testify whether or not in their opinion classified material came in the report, because if it is so that there is nothing classified in the report, then we have a different situation.

Mr. ASPIN. I think what you would find is that the committee would come down 9 to 4 on that issue. I will tell you exactly how the committee—

Mr. BENNETT. What do you mean, 9 to 4? This committee?

Mr. ASPIN. No, no, no—the Pike committee.

Mr. BENNETT. The former committee.

Mr. ASPIN. Yes. McClory would say that there was classified information in it. Kasten would say—

Mr. BENNETT. You are not qualified to do that.

Mr. ASPIN. What I am saying is there is a difference of opinion.

Mr. BENNETT. That doesn't make any difference about classified material. It doesn't make any difference how many people vote. This is not a popularity contest. This is a question of officially classifying.

Mr. ASPIN. That is right. But if you are going to call in more witnesses, what you are going to find is that the committee—if you call in the 13 members of the committee, you will find 9 of them have said there is no classified information.

Mr. BENNETT. I had no idea of calling in the committee. I had in mind calling in people who said this material should have been classified and was classified.

Mr. ASPIN. OK.

Mr. BENNETT. I have no further questions.

Mr. FLYNT. Mr. Hutchison.

Mr. HUTCHISON. No questions.

Mr. FLYNT. Mr. Quie.

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Mitchell.

Mr. MITCHELL. No questions.

Mr. FOLEY. Mr. Chairman.

Mr. FLYNT. Mr. Foley.

Mr. FOLEY. Mr. Aspin, if one took the position that any material which was used by the committee that came from classified documents was in fact classified material, it would have been impossible to write the report without the concurrence of the executive branch to release the report.

Mr. ASPIN. Absolutely.

Mr. FOLEY. And was it your position that that would have been an improper condition to place on the release of the report?

Mr. ASPIN. That is absolutely the case—because how can you possibly set up a committee of Congress to investigate a situation or a series of situations in the executive branch and mandate them to report back to the Congress their findings, writing in a clause which says that, in fact, they get prior censorship over the report.

Mr. FOLEY. Every classified document that you have ever seen contains some elements which are not classified and which are in the public domain.

Mr. ASPIN. Exactly. And information comes over from the Pentagon which says that, "Our program for building in the future is so many submarines, so many ballistic missile submarines, so many nuclear attack submarines." and so on. Well, there are ways of summarizing that which are not in a classified form, particularly if you leave out the specific numbers, that is enough to declassify it. And that is what you are doing—when you are writing the report, you are taking classified

documents, certainly, but you are writing a report and summarizing and eliminating the particulars which are the classified part.

Mr. FOLEY. A document might contain, for example, a statement that from such-and-such a time to such-and-such a time Mr. Henry Kissinger was the national security adviser to the President of the United States and as such was the executive officer of the National Security Council.

Mr. ASPIN. Right.

Mr. FOLEY. That is a well-known fact.

Mr. ASPIN. Right.

Mr. FOLEY. Yet it might be contained in a classified document. That is what you are addressing here.

Mr. ASPIN. Exactly.

Mr. FOLEY. That the specifics in the report in your judgment did not involve information which was specifically classified as presented in the report.

Mr. ASPIN. Exactly so.

Mr. FOLEY. Even though they were drawn from classified documents.

Mr. ASPIN. Yes.

Mr. FOLEY. Thank you.

Mr. FLYNT. Mr. Marshall.

Mr. MARSHALL. Mr. Aspin, I don't want to prolong this unduly, but I think it is important to clear this up. Given the fact that some rewrites occurred concerning classified information which was put into the select committee's report, was the department which put the initial classification on that information ever consulted to determine if it agreed with the select committee's decision that the summary was no longer in a manner which would result in a security classification?

Mr. ASPIN. We were dealing in all cases with Mr. Rogovin. So he was the spokesman for the executive. And I think he was authorized by all of the Departments—State, Defense, CIA—that if he agreed with the wording it was okay with them. Now, in certain cases when they negotiated with the committee members, it is clear that that was so. In other cases I think there were perhaps cases where we did vote to change it, and we went ahead with our voted change without going back and asking Mr. Rogovin. And in other cases we voted against the position that Mr. Rogovin took.

Mr. MARSHALL. So there may have been information in the report which Mr. Rogovin thought was classified but the committee thought was not.

Mr. ASPIN. I am sure there is no question, if Charlie Bennett wants to call Mitch Rogovin up here, he will tell you there was classified information in it.

Mr. MITCHELL. Mr. Chairman, one further question.

Mr. FLYNT. You will have to make it quick.

Mr. MITCHELL. We learned there were something like 74,000 classified documents that your committee handled. How many instances would you say there were where there was a disagreement between Mr. Rogovin and your committee on classification of a document—just roughly. A hundred, five hundred?

Mr. ASPIN. I think we started with 150, is my recollection.

Mr. MITCHELL. What did you end up with?

Mr. ASPIN. I don't remember.

Mr. MITCHELL. Thank you.

Mr. FLYNT. Thank you, Mr. Aspin.

Mr. ASPIN. Do you want me back?

Mr. FLYNT. You may step down. We will not want you back immediately. It may be that we will wish to ask you a few more questions in executive session, but we will notify you and I assume you will come.

You may step down with the thanks of the committee.

The committee will suspend until after the last vote on suspension. [Whereupon at 2:40 p.m. the committee suspended.]

Mr. FLYNT. The committee will come to order.

The next order of business will be the appearance of our colleague, the Honorable William Lehman, a Representative from the State of Florida.

Mr. FLYNT. Mr. Lehman, will you rise and take the oath?

You do solemnly swear that the testimony you will give before this committee in the matters now in consideration will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. LEHMAN. I do.

TESTIMONY OF HON. WILLIAM LEHMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FLYNT. You are William Lehman, a Representative from Florida, a former member during the life of the Select Committee on Intelligence of the House of Representatives?

Mr. LEHMAN. Yes.

Mr. FLYNT. Do you have a statement which you wish to make?

Mr. LEHMAN. Yes.

Have you passed them out? Do you have those statements with you?

I have the one statement. I can read it. In fact, if you want to get it mimeographed first, either way.

Mr. FLYNT. Go right ahead.

Mr. LEHMAN. The events of the week of January 19 are jumbled due to preoccupation and concern over the health of my daughter, Kathy, which delayed my return to Washington until Wednesday, January 21.

I arrived on the afternoon of the 21st with my daughter, her husband, and my wife. Mike Ferrell, who heads my Washington office, picked us up at the National Airport. We dropped him off at the Cannon House Office Building and proceeded directly to the NIH Hospital where my daughter was admitted for additional testing.

Naturally, I did not have the draft report in my possession any time that evening following my arrival.

The next morning, Thursday, the 22d, I arrived late at the committee's session, going out to the National Institutes of Health first. It was at this meeting that I saw the draft report for the first time.

I returned to my office following the session without the report. My staff made several calls to the committee following Thursday's meeting to inquire about the availability of the report. I was anxious to depart again for the hospital and I thought I could further study the report while there. It soon became apparent that the revisions could not be completed before I left the NIH, so it was not delivered that day.

Friday morning, the 23d, in the early part of the afternoon I spent at NIH Hospital. I do not recall returning to the office that day. The final report, however, was delivered to my office but returned to the committee via committee staff member later that same Friday afternoon. That is what my staff has told me.

Instructions to the Intelligence Committee were relayed through my staff by phone that I would come by the committee's office on Saturday between 10 a.m. and noon to pick up the report on my way to the hospital.

On Saturday morning when I went to pick up my copy of the report, it could not be located. I was given another copy. I kept that particular report, that particular copy of the report, in my possession until Monday morning when I, to the best of my recollection, returned the copy of the report I was handed on Saturday to committee staff before the scheduled meeting. I did not remove any copy of the report from the hearing room or committee offices after the meeting. My personal copy of the report is yet to turn up as far as I know.

If it is of interest to the committee, I believe I can relate the whereabouts of the draft report prior to my arrival on January 21.

On January 19, the committee was unaware that, because of my daughter's illness, I would have to remain in Miami. A copy of the report, however, was delivered to my office on the afternoon of the 19th. It is unclear whether it was returned that evening or remained in the possession of Mike Ferrell, who served the report, since he was my liaison with the committee during the entire proceedings and I was down in Miami.

I hesitate on this simply because during the 3-day interval, the report was delivered and returned a couple of times. Without question though, the report was in the possession of the committee Wednesday evening, and either Monday or Tuesday evening. This would mean that Mr. Ferrell was in sole control of the document for one evening.

I have his solemn assurance that the report was not read by him, although it was nevertheless in his possession until it was returned by committee messenger either Monday or Tuesday evening.

This concludes my prepared remarks. I would be happy to answer any and all questions pertaining to the House Intelligence Committee.

Thank you for giving me this opportunity.

If I am a little vague about these times, I was under great strain due to my daughter's illness. I even have a copy of the surgical neurological report if you need any substance for that.

Mr. FLYNT. Thank you very much, Mr. Lehman. We certainly extend to you our thoughts.

Mr. LEHMAN. By the way, my daughter is doing fine now.

Mr. FLYNT. Counsel may have a question.

Mr. MARSHALL. Mr. Lehman, you are appearing here at the invitation of the committee?

Mr. LEHMAN. Yes.

Mr. MARSHALL. Prior to the hearing, you received copies of the House Resolutions 1042 and 1054. have you not?

Mr. LEHMAN. I assume I have. I can't identify them by number.

Mr. MARSHALL. There is one before you, sir. Also before you are copies of the Rules of the House Committee on Standards of Official

Conduct, the investigative procedures adopted for this hearing, as well as a copy of the chairman's opening statement.

Should you wish to consult those at any time, please so advise.

Mr. LEHMAN. I have no problem.

Mr. MARSHALL. Have you turned over to this committee's staff all the documents which you were requested to bring with you?

Mr. LEHMAN. Yes.

Mr. MARSHALL. Which pertain to the subject matter of this committee's inquiry?

Mr. LEHMAN. I have no other documents at hand that you don't have.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data which occurred during the executive session of the Select Committee on Intelligence's meetings, or where your answers may contain classified information or evidence which would tend to defame, degrade, or incriminate any person, would you please advise this committee so that the committee may take appropriate actions, that is go into executive session or such other action as is necessary under the House rules?

Mr. LEHMAN. I understand.

Mr. MARSHALL. Mr. Lehman, going to the remarks you made in your prepared statement, as I understand what you have just told the committee, the first time a draft of the select committee report was delivered to your office was on January 19; is that right, sir?

Mr. LEHMAN. That is what my staff tells me. Of course I wasn't here. I have no firsthand information on that. That is what I understand.

Mr. MARSHALL. And you understand that Mr. Mike Ferrell, who is also present, I believe, here—

Mr. LEHMAN. Right.

Mr. MARSHALL. Received that copy on your behalf.

Mr. LEHMAN. That is my understanding from Mr. Ferrell, who to me—I don't question his sincerity and truth.

Mr. MARSHALL. Was that copy eventually returned to the committee, or was that retained until you arrived at your office?

Mr. LEHMAN. Let me see. It was not in my office when I got there, no.

Mr. MARSHALL. Do you know what happened to that copy?

Mr. LEHMAN. To the best of my knowledge, it was sent back to the committee staff some time before I got back, some time before I first appeared on the committee, some time that Thursday morning. My understanding was that it made a couple of round trips during that Monday, Tuesday, and Wednesday.

Mr. MARSHALL. Do you know who actually served as the person who carried the draft of January 19 from your office to the Intelligence Committee?

Mr. LEHMAN. I don't know who Mike said came back for it the second time—the first time. I wasn't there, you know.

Mr. MARSHALL. Yes, sir.

Mr. LEHMAN. And he told a member of the committee staff but I don't remember who it was.

Mr. MARSHALL. Do you have any objection should we ask Mr. Ferrell to testify?

Mr. LEHMAN. No; of course not, and I don't think he does either.

Mr. MARSHALL. With regard to the draft of January 23, as I understood what you told the committee, the draft which was set aside for you, that is your personal draft—

Mr. LEHMAN. Right.

Mr. MARSHALL [continuing]. Could not be located when you subsequently asked the Select Committee on Intelligence—

Mr. LEHMAN. Yes.

Mr. MARSHALL [continuing]. To obtain a copy of the draft for you.

Mr. LEHMAN. When I went down Saturday morning to the committee, it would be the first time I really had a day or two to really study this, because I spent most of my time running back and forth to the NIH, and I thought that this would be the only opportunity I would have to really get into this document, and even though I had to take it out of the committee to study, I was going to keep it close at hand over the weekend, which I did, and have a chance to read it. It was not my own document. They assembled one or got me one from somewhere else, and gave me a kind of a make-shift or a substitute document, because I made a note or two on mine. I know this was not—the staff and I both knew this was not my document.

Mr. MARSHALL. When you went to the select committee offices to get your personal copy on January 23, with whom did you speak?

Mr. LEHMAN. Gee, I don't remember. I usually talked with Fred Kirschstein or Searle Field. It was probably one of them, whoever was in the office that morning. I can't remember right now.

Mr. MARSHALL. But in any event, a search was made to attempt to locate that copy.

Mr. LEHMAN. Right.

Mr. MARSHALL. While you were there, and it could not be done—

Mr. LEHMAN. It was not locatable.

Mr. MARSHALL. Was there any explanation offered to you as to why it could not be located?

Mr. LEHMAN. No. It was puzzling, but I didn't pursue the question. I was more anxious to get a copy to study, and to get going out to the hospital, where I was to meet my family.

Mr. MARSHALL. Did you make any later inquiries of the select committee members or staff—

Mr. LEHMAN. Yes.

Mr. MARSHALL [continuing]. As to the location of your copy?

Mr. LEHMAN. When I went back Monday morning, to the best of my knowledge, I said, "Did you ever find my own document?" And at that time it was still as far as to my knowledge not available.

Mr. MARSHALL. That was Monday, January 26?

Mr. LEHMAN. That was before the meeting I came to on Monday.

Mr. MARSHALL. And so far as you know, your copy has never been located?

Mr. LEHMAN. To my knowledge.

Mr. MARSHALL. Do you know if the staff or anyone in the committee initiated an investigation to attempt to locate that copy?

Mr. LEHMAN. I know they were looking for it Saturday morning when I was there.

Mr. MARSHALL. While you served as a member of the select committee, were there any instances that you recall where an investiga-

tion was instituted by the select committee staff or members concerning leaks of information from the select committee which appeared in the media?

Mr. LEHMAN. Do I know of any; did I have a conversation with any staff members concerning an internal investigation of the leaks to the media?

Mr. MARSHALL. Yes, sir.

Mr. LEHMAN. I can't recall any conversations I had in that respect.

Mr. MARSHALL. Do you recall any discussion among the committee members as to the need for such investigation?

Mr. LEHMAN. It seems like there was some concern as to where certain information was coming from, but I don't recall any conversations to initiate an investigation per se.

Mr. MARSHALL. At the time the select committee adopted what was its bound report, which I believe has been referred to as the January 23, 1976, report, did that report contain classified information?

Mr. LEHMAN. Yes. The final report?

Mr. MARSHALL. Yes, sir.

Mr. LEHMAN. Yes, to my knowledge it did. It was certainly not to be released until—as you know, the House voted against the release of this. That was the whole idea.

Mr. MARSHALL. Under the rules of the select committee at the time it adopted the January 23, 1976, report, was there any discussion as to whether that report was going to be made public?

Mr. LEHMAN. Well, the committee itself voted to make—to publish this report or to make it available, subject to the confirmation by the House itself. It went before the rules—it took it before the Rules Committee to get the report underway, to see if that could be published. I don't know exactly how that question is worded as to how it relates to the later action of the House itself.

Mr. MARSHALL. All right, sir, let me see if I can phrase it better.

At the time the select committee adopted its final report—

Mr. LEHMAN. Right.

Mr. MARSHALL [continuing]. That is the report dated January 23, 1976—

Mr. LEHMAN. Right.

Mr. MARSHALL [continuing]. Was it your understanding that its action in adopting that report also meant that it was going to take the report to the rules committee to determine if it could be made public, or was it your understanding that that committee action in adopting the report was in itself an action to—

Mr. LEHMAN. No, my understanding was adoption of the report did not make it public.

Mr. MARSHALL. Did not make it public?

Mr. LEHMAN. Right.

Mr. MARSHALL. Mr. Lehman, Mr. Schorr, Daniel Schorr, has stated an article in the Rolling Stone on April 8, 1976 that he had possession of the Select Committee report on January 25, 1976.

Did you give the report or a draft of any portion of the report to Mr. Schorr?

Mr. LEHMAN. No.

Mr. MARSHALL. Or to any other person?

Mr. LEHMAN. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. LEHMAN. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof?

Mr. LEHMAN. No.

Mr. MARSHALL. Do you know of anyone who has this knowledge?

Mr. LEHMAN. No.

Mr. MARSHALL. Did you give the report or make any part of the report available to anyone outside of the Select Committee on Intelligence?

Mr. LEHMAN. No.

Mr. MARSHALL. Do you know anyone who did?

Mr. LEHMAN. No, no more than what was in the original testimony, that it came to my office and back.

Mr. MARSHALL. The points that you have already covered.

Mr. LEHMAN. Right.

Mr. MARSHALL. Did the committee itself ever consider, to your knowledge, the problem of making distribution of drafts of the committee report, and how that would be handled in terms of signing for drafts, designating the specific persons who would be authorized to receive those drafts, or any other procedure which would allow a later accounting for the drafts as they were distributed?

Mr. LEHMAN. No, I don't know of any such procedure that was set up.

Mr. MARSHALL. Did anyone ever raise the need for such a procedure?

Mr. LEHMAN. I wasn't raising any other needs at that time, but I was spending as much time with the committee as I could, but I didn't have that kind of—I wasn't concentrating that much on the committee itself at that time. I did not hear any such activities initiated.

Mr. MARSHALL. Did you give any special instructions to your staff in advance of distribution of the various drafts which you have already testified about, as to what the staff was to do with the draft which was left in your office, when you were not present?

Mr. LEHMAN. I never expected the draft to arrive in my office when I wasn't present.

Mr. MARSHALL. You expected the draft to be handed to you personally.

Mr. LEHMAN. Right. I was surprised to learn it had come back and forth a couple of times without my presence.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. No questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. Just one question, Mr. Chairman.

Mr. Lehman, was there any marking or designation on the copy of the report originally issued to you so you could distinguish your copy if you ever saw it again?

Mr. LEHMAN. I usually make a lot of marks on paper just to remind myself, underline and circle, put question marks and such things as that. I don't remember the exact markings but I do a lot of scribbling.

Mr. MITCHELL. But any designation marks would have been ones which you put on the page. There wasn't any committee designation whatsoever.

Mr. LEHMAN. No; I don't think there is any question that they couldn't find my copy. I don't think the staff had any problem or I had any problem. That was just not there that morning where they could get to it.

Mr. MITCHELL. There was a thorough search for the copy that you had initialed.

Mr. LEHMAN. I don't know whether I initialed it, but it was my copy, and I didn't have it.

Mr. MITCHELL. And it never has turned up.

Mr. LEHMAN. To my knowledge.

Mr. MITCHELL. Thank you.

I have no further questions.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. I have no questions.

Mr. FLYNT. Mr. Lehman, we thank you very much for your appearance.

Mr. LEHMAN. I will give you this so you can get copies made of it.

Mr. BENNETT. We are glad your daughter is better.

Mr. LEHMAN. Thank you, that is the main thing.

Mr. FLYNT. Thank you very much.

In conformity with what counsel has just said, at the appropriate time we may ask Mr. Ferrell to testify.

Mr. FLYNT. Honorable Philip H. Hayes.

Mr. FLYNT. Mr. Hayes, would you please raise your right hand?

You do solemnly swear the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. HAYES. I do.

TESTIMONY OF HON. PHILIP H. HAYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. FLYNT. You are Philip H. Hayes, a Representative from Indiana?

Mr. HAYES. Yes, Mr. Chairman.

Mr. FLYNT. During the tenure of the Select Committee on Intelligence, you were a member of that committee?

Mr. HAYES. That is correct.

Mr. FLYNT. Were you a member during the entire life of that committee?

Mr. HAYES. Only from the period of the second resolution of July.

Mr. FLYNT. The reorganization thereof?

Mr. HAYES. Yes, that is correct.

Mr. FLYNT. Mr. Hayes, we welcome you, our colleague, before this committee.

Mr. HAYES. Thank you.

Mr. FLYNT. We would receive any statement written or oral that you care to make to the committee.

Mr. HAYES. I have no written statement prepared. However, in your letter of July 12, Mr. Chairman, you asked that I bring with me those materials, documents, correspondence or other things relating to the subject of this investigation that I might have in existence prior to January 29, and I have first a copy of the report of the committee in draft form.

Mr. FLYNT. Is that in two volumes?

Mr. HAYES. In two volumes, that is correct, which was transmitted to me on the 19th of January, and there is also a cover letter from Mr. Field, and that is in two volumes, and I will make those available to your committee staff now.

Mr. FLYNT. May I at this time inquire if that is in exactly the form that you received it on the 19th, or were there subsequent additions and alterations made a part of it?

Mr. HAYES. No, that is in exactly the form as received in my office on the 19th.

Mr. FLYNT. On the 19th.

Mr. HAYES. And they are also the subject of which your staff investigators have talked to me about before, and have not been made available until this time. Then I also have a transmission from Mr. Donner of the same date, January 19, which are partial lists of recommendations for consideration. They also are directed not to be released, and so I will furnish those to the committee at this time.

In addition there are two copies in the black binder, one bound, one unbound, of recommendations which are, I believe, later termed substitutes. There are also materials authored by Mr. Aspin, Mr. Milford, and they were delivered to me I believe after the 23d of January 1976. I was not in attendance on the 23d day of January 1976. I was out of the city. I believe the record will reflect, however, that my vote was cast by proxy that day, although I am not precisely sure.

The two copies of the recommendations, bound and unbound are there.

The other documents I couldn't date precisely, so I don't know whether they were relevant after or before the 29th of January, but I brought those along. One is a motion of Mr. McClory's. The other is an insert simply labeled "F" otherwise labeled "Prohibition of Fund Transfers." I brought those along.

In the event you are interested, one dated February 3, 1976, entitled "Recommendations Already Amended and Agreed To," so I assume some of them predate the 29th, and they might be of some interest. Other than that, I had no other materials that I thought would be of relevance to you.

Mr. FLYNT. Thank you, Mr. Hayes.

Each of the documents which you have brought with you and to which you have referred will be received by the committee. They will not necessarily be made a part of the record nor printed.

Mr. HAYES. No; pursuant to the rules of this committee, I would consider most of the materials there to either be covered by the resolution of the House, the Young resolution or otherwise covered by the rules of the select committee on confidentiality.

Mr. FLYNT. We give you the assurance that they will be safeguarded, and that they will be returned to you as promptly as possible.

Thank you, Mr. Hayes.

Do you have any other statement you wish to make?

Mr. HAYES. The committee staff, in discussing with me the subject of the investigation, had asked me a variety of questions, not too many. One was I did not know at the time I first discussed with them where I had been on January 23 precisely. I had been on United Airlines flight 455 at 9:15 in the morning and returned the following week. The delivery of the two-volume draft of the 19th plus the inserts from, or materials rather, from Mr. Donner were made early in the morning on the 19th, and I was in and about my office, but they were not handed to me directly. They were there in a large brown envelope large enough to encompass the two volumes, and then the other envelope was sealed on top. They were sealed. I opened them myself, and kept them for safekeeping in my safe. I did not remove them nor did I take any inserts and remove materials from the original and insert the new materials, so I kept everything pretty well separate or worked with one or two drafts.

The so-called insert material I believe I have in duplicate. One was what I used as a working copy. The other was a draft copy which was given to me after the 23d. I assume it was delivered to me the following Monday if we met, whenever the next meeting, the next regular meeting after the 23d was.

During the period of the 19th through the 23d, the materials were kept in my office safe. I have the combination to the safe. No one else except for the superintendent of the building, who distributes that combination, has it. My staff had no authority for access to any of the materials from the select committee.

I did not use a liaison or anything like that.

Mr. FLYNT. Mr. Marshall, committee counsel, has a few questions.

Mr. MARSHALL. You are appearing here, sir, at the invitation of the committee; is that correct?

Mr. HAYES. That is correct, Mr. Marshall, with the understanding that the committee has subpoena powers and would, if it finds it in the course of its investigation necessary, use those, and that is my understanding.

Mr. MARSHALL. Prior to the hearing, you received copies of House Resolutions 1042 and 1054?

Mr. HAYES. Yes.

Mr. MARSHALL. Copy of the rules of this committee?

Mr. HAYES. Yes.

Mr. MARSHALL. Copy of investigative procedures adopted by this committee?

Mr. HAYES. Yes.

Mr. MARSHALL. And a copy of the chairman's opening statement?

Mr. HAYES. Yes.

Mr. MARSHALL. In the event that your evidence or testimony may involve any information or data concerning an executive session of the Select Committee on Intelligence or classified information, information or evidence which would tend to defame, degrade, or incriminate any person, please call that to the committee's attention so it may take appropriate action under the rules of the House of Representatives.

Mr. HAYES. Yes.

Mr. MARSHALL. You mentioned that you have produced for the committee a copy of the cover letter from Mr. Field—

Mr. HAYES. Yes.

Mr. MARSHALL [continuing]. Which accompanied the draft of January 19, 1976, of the select committee?

Mr. HAYES. That is correct.

Mr. MARSHALL. Does that cover letter contain classified information?

Mr. HAYES. No; it does not. The cover letter is instructive, and in summary notifies me—

Mr. MARSHALL. It is one page, is it not?

Mr. HAYES. It is one page.

Mr. MARSHALL. Fairly brief.

Mr. HAYES. Yes.

Mr. MARSHALL. Would you mind reading it for the committee at this time?

Mr. HAYES. Not at all.

JANUARY 19, 1976.

HON. PHILIP H. HAYES

DEAR CONGRESSMAN HAYES: Enclosed is a copy of the draft final report of the Select Committee. Draft recommendations and appendices will follow shortly.

The chairman has scheduled a meeting for Tuesday, January 20, for the purpose of discussing the report and recommendations. I remind you that release of this draft report to unauthorized persons constitutes a violation of committee rules.

Sincerely,

A. SEARLE FIELD, *Staff Director*.

That is the only identification as to whose copy this is, both volumes.

Mr. Donner's material also carried the same caveat.

Mr. MARSHALL. About release to unauthorized persons?

Mr. HAYES. Yes.

Mr. MARSHALL. Let me ask you this: Did you ever get the draft of January 23, 1976, of the select committee report?

Mr. HAYES. If you mean by draft, the original minus some materials, and including others, no, I did not. I never received any such single documented report as such.

Mr. MARSHALL. Did you receive certain changes to the January 19, 1976, draft?

Mr. HAYES. Not as such. What I had always received were, for example, the material in this bound volume which is labeled simply "Recommendations." There were other items here. For example, here is another labeled "Recommendations of Honorable Les Aspin." They begin at various places in the report, but I never received anything as a whole that would indicate this is now the final volume that we would be working with or that we will vote on on January 23 or any other date.

Mr. MARSHALL. Did you ever see a copy of the January 23 report that was finally adopted by the select committee as its report?

Mr. HAYES. No, I did not.

Mr. MARSHALL. On the January 19 draft that you have before you, are there any indications that it contains classified information, that is indications appearing on the face of the document?

Mr. HAYES. Not on the face of the document. Within the volume I, for example, there is a table of contents. It is written in report form. There is, from my reading, and it has been some time now, no particular

indication that is classified matter, that it contains matter classified. It depends on who classified it, of course. There were many things labeled classified that weren't apparently strictly classified, so the only thing, of course, is the letter from Mr. Field indicating that the entire two volume set was subject to committee rules on confidentiality.

Mr. MARSHALL. There is nothing on the report to indicate that it has been accounted for and this is your copy of the report.

Mr. HAYES. No, there is not.

Mr. MARSHALL. Did the committee ever consider the need to account for drafts of the report, either the January 19 or January 23 draft?

Mr. HAYES. I don't remember—

Mr. MARSHALL. I may need to go a little further to be precise, either by numbering copies or by instructing those who delivered copies, the persons to whom they were to be delivered or things of that nature.

Mr. HAYES. No, there was no formal discussion of that to my knowledge.

Mr. MARSHALL. Now, do you recall the committee entering into an agreement with the executive department on or about October 1, 1975, concerning the handling of classified information?

Mr. HAYES. No, I don't recall any such agreement.

Mr. MARSHALL. All right, sir. Your smile indicates you recall something, so tell us.

Mr. HAYES. I recall some things they may call an agreement, and I recall a general controversy that surfaced. That involved Chairman Pike, Mr. McClory, and the subject matter of conversations that I wasn't privy to between the two of them and various officials at the White House, others who were in liaison with the committee. There was never a vote up or down on whether or not we had entered into an agreement as a committee to receive things back and forth in mutual confidentiality with the executive branch and a committee of the Congress. I think I remember specifically Mr. Pike's opinion that that committee couldn't enter into such a thing on behalf of the U.S. Congress.

Mr. MARSHALL. But you did not as a committee member then feel bound by any committee agreement, because you thought there was no such agreement.

Mr. HAYES. That is right. I did not feel so bound, and the reference, for example, during the debate on the Young resolution by Mr. Young, that there may have been an agreement even, and the assertions by Mr. McClory that there indeed was a hard and fast agreement between the committee leadership and the executive branch that as a matter of honor would prohibit our committees publishing the report, I certainly did not agree with nor did I think the committee had the power to do that, and I don't recall any specific action that would lead me to believe we did do that.

Mr. MARSHALL. Were you aware that there were certain differences of opinion between the committee staff and the executive branch about what material should remain classified insofar as it pertained to materials going into your report?

Mr. HAYES. In general, but not specifically. I was aware of controversy involving what matters should or should not be made public.

Mr. MARSHALL. We have heard testimony that the committee made decisions about declassifying, and I am using that word advisedly, when an agreement could not be reached with the executive branch about what classification the material should have.

Did you take part in any of those decisions?

Mr. HAYES. Do you want to give me an example, Mr. Marshall? I am afraid I can't—

Mr. MARSHALL. Without going into the substance of it, there has been evidence before this committee that there were disputes between the committee and the CIA, particularly Mr. Rogovin representing the CIA, as to whether prior classification which was put on material should remain in effect. Some of those disputes apparently were solved. Other disputes were not resolved.

Mr. HAYES. All right.

Mr. MARSHALL. What I am trying to find out is if you, as a committee member, had a decisionmaking task, and what should be done in those instances where disputes were not resolved.

Mr. MARSHALL. Mr. Hayes.

Mr. HAYES. Yes, I remember participating in the general discussion of how to resolve one specific dispute that I know of.

Mr. MARSHALL. Well, is it correct that if the disputes could not be resolved then the committee made another decision as to whether the security classification would still obtain?

Mr. HAYES. The decision was whether or not, I think, to make public. That is more precise and, yes, that was my understanding. We did do that.

Mr. MARSHALL. Looking back on your experience as a committee member, do you feel that you had sufficient information as to the original reasons for security classifications in order to make that decision as to whether that information could be made public?

Mr. HAYES. Yes, I think I understood the matters to be weighed, the considerations that should be weighed in regard to whether or not certain material would become public and, if it would become public, how that disclosure balanced against the right of the Congress and need for the Congress to investigate the subject matter and, on the other hand, the need for security over the material.

Mr. MARSHALL. How were those considerations brought to your attention? In other words, was someone there to present to the committee the original reasons for the classifications and what the effect would be in the person's opinion in the event the classifications were abandoned?

Mr. HAYES. I can generally remember long and, I think, heated discussion on several different occasions. I think, for example, Mr. Colby's testimony in executive session would probably reveal to your committee the intensity of his belief that much of the material shouldn't be disclosed. And I think that certainly the correspondence back and forth between the White House and the committee chairman, copies of which were made available to all of us, pretty well explicated the reasoning behind the executive's decision and what their arguments were, what the considerations were.

So, yes, I felt fully informed and briefed, so to say, on what the security considerations were.

Mr. MARSHALL. Did—

Mr. HAYES. I did not always consider them valid, but in some instances I did.

Mr. MARSHALL. Did the committee in those deliberations ever consider going back to the House itself rather than simply exercising the decisionmaking power that certain matters should be classified?

Mr. HAYES. Yes. I think specifically in the matter of citing the Secretary of State for contempt of Congress, there were a series of subpoenas issued, they were either complied with in the opinion of the Secretary of State and not complied with in the opinion of the committee.

And so the record discloses a series of votes, I think, and the consideration to go, then, to the full House to gain support for seeking out the materials that were originally asked for.

Mr. MARSHALL. I am referring particularly to the problem of deciding what materials should be declassified. I am wondering if the committee was concerned with the possible problems inherent in one committee making those decisions?

Mr. HAYES. Yes.

Mr. MARSHALL. Without the full authority of the House?

Mr. HAYES. Yes, I think that was discussed. I think Mr. McClory and certainly Mr. Treen were adequate spokesmen for the point of view, in that way. I name those two because I recall on occasion their discussion. But I think they also wished for the committee's requirements to be complied with for the committee's needs to be met.

Mr. MARSHALL. Have you had occasion to examine the draft or portion of the draft which was published in the Village Voice in its issues dated February 16 and February 23?

Mr. HAYES. By draft—you mean, have I read the Village Voice?

Mr. MARSHALL. Yes.

Mr. HAYES. No, I did not.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in Rolling Stone—

Mr. HAYES. I read that.

Mr. MARSHALL [continuing]. April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give this report to Mr. Schorr or a draft of the report?

Mr. HAYES. No.

Mr. MARSHALL. Do you know of any other person who did?

Mr. HAYES. No, I don't.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of this report?

Mr. HAYES. No.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. HAYES. No, I do not.

Mr. MARSHALL. Did you give any draft of the select committee's report or make any part of the report available to anyone outside of the Select Committee on Intelligence?

Mr. HAYES. No, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HAYES. No, I do not.

Mr. MARSHALL. At any time was any draft, that is the January 19 draft or the other documents that you indicated you received, left in the sole possession of your staff; that is, it was outside your possession and not in the safe?

Mr. HAYES. The draft material was on my desk, upon arrival at my office on the day of delivery. In that sense I suppose it was in the possession of staff, although it was delivered directly to my office and then placed on my desk.

Mr. MARSHALL. Was it sealed at that time or was it open?

Mr. HAYES. As I recall, the material from Mr. Donner was sealed and I opened that. I can't tell you for sure if the large envelope was sealed or simply folded under. But my recollection is that it was sealed, it was glued down, but it is possible it was not; it was a rather large manila envelope.

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. I have no questions.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. I have no questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Did you at any time receive any letter of transmission other than the letter that you have read to this committee on any of the material coming to you from the committee?

Mr. HAYES. No, Mr. Bennett; I think that is the only letter of transmittal that I received. The later inserts that are in the black bound volume were picked up from the committee room later on by me.

Mr. BENNETT. I noted that that letter made absolutely no reference to technically classified material but only to the violations of Rules of the House about the release of the information under committee rules.

Mr. HAYES. That is right.

Mr. BENNETT. You do not have a recollection of anything else being told or written to you about not releasing that?

Mr. HAYES. No; I don't think the committee dealt too heavily with that. It was sort of a blanket prohibition against disclosure and—

Mr. BENNETT. I sort of get the impression from listening to you and other members of the committee, that it was just decided, perhaps never by any specific vote but that anything you felt the committee had the right to look into, you also had the right to publish.

Mr. HAYES. No; that was not my opinion, Mr. Bennett. And I wouldn't represent that opinion to be one that was very current within the committee.

Mr. BENNETT. And I am trying to find this out.

What was your impression about the attitude of the committee as to publishing secret and other classified material?

Mr. HAYES. That the committee had the responsibility and also had the power to publish, as you may say, what it wanted to publish. But, it of course, had that responsibility within the framework of its investigation, with due consideration for the materials that were there, that were, in the opinion of the executive branch, dangerous to the security of the country and were argued in that fashion, that they were, in fact, dangerous to our security.

So, yes, we could very well probably have published just about anything by a majority vote, which is precisely the objection that Mr. Rogovin made on many different occasions; that that kind of power was far too broad. In some instances I believe he was correct; that in some instances perhaps it would have been unwise to publish. And I don't think the committee ever intended to do that.

But for example, with the report itself, my vote in favor of the report and going ahead with it wasn't conditioned on somebody coming down later and telling me that that was all right. Mr. Pike. I think, mentioned during the course of the debate, with Mr. McClory and

others, that we weren't really a congressional committee if we were going to publish a report and then have the President come down and edit it or to have one of his representatives do that.

Mr. BENNETT. Did it ever occur to the committee there might be a way to have a classified report?

Mr. HAYES. I am not sure whether that was specifically discussed on the record within the committee. I do know that that suggestion, I think, was discussed among ourselves. But I don't believe it was ever anything acted on officially.

Mr. BENNETT. The committee, therefore, sort of had the feeling that the action of the committee was sufficient to declassify secret material?

Mr. HAYES. No, I don't think that feeling was there at all. I think it was simply this: That a report needed to be made by the House Select Committee on Intelligence and so a report was made; the report was then adopted. If somebody wanted to stop it, they could go get Mr. Young and bring a resolution down on the floor and stop it, which is precisely what was done later on, all within the framework of the Congress' rules. And that was the nature in which there was an intervention and the report was halted.

Mr. BENNETT. Was there not discussion in the committee about the procedure by which this confidential and secret material could be protected, to wit: Action by the Rules Committee, or was that something that just occurred afterward?

Mr. HAYES. No. I think—I know Mr. Lehman indicated there was something, some other thing that was going to have to happen, as he understood it, when he voted. That was not my understanding.

My understanding was that this was a committee report just like the committee report of any other committee, and it had been drafted by a staff. The materials were argued about, some materials were excluded, others included.

You can see from the various drafts Mr. Aspin, Mr. McClory, Mr. Treen, and others had suggestions to add or detract from it. Once that was done and once finally voted on, that was to be the report of the committee to be issued right along with it.

Mr. BENNETT. Do you think the committee just felt that if nobody was advised enough or took enough initiative to bring up the question of classified material that it would just slide through and become public and that that gave them no concern?

Mr. HAYES. If anybody had that opinion of Mr. McClory, Mr. Treen, or Mr. Milford, they needed to get reacquainted with those gentlemen, because I don't think I was under any such delusion, nor was anyone else. There was no attempt to slide anything through or over, Mr. Bennett. I think it was an expression of the will of the committee to publish a report and what ought to be in that report.

Mr. BENNETT. And they thought that a majority of the Members of the House would vote some way on the matter because Mr. Treen or somebody else would raise the question?

Mr. HAYES. Yes. I think that it was apparent that the question would be raised. Certainly there was debate and discussion about the procedures of the committee. I know that the executive was very busy working in the House of Representatives, because I talked to them, who told me they were busy doing it, told me what they were doing.

Mr. BENNETT. Busy doing what?

Mr. HAYES. Gaining support for the administration point of view that the report itself contained materials which would be dangerous to the security of the country and otherwise violate the classification system that the CIA had set up.

Mr. BENNETT. I am slighted that they did not contact me.

That is all I have.

Mr. FLYNT. Mr. Quillen?

Thank you, Mr. Bennett.

Mr. QUILLEN. Let's set the record straight; the resolution creating the Select Committee on Intelligence was an original resolution of the rules committee.

Mr. HAYES. Yes, sir.

Mr. QUILLEN. When the select committee was created and performed its function, then it was necessary to come back to the rules committee for authority to go to the floor and discuss the report which had been made, but the rules committee in its original resolution said that no part of that should be released—I do not have the exact language here—unless prior approval had been given.

Mr. Chairman, I think what I have said is basically correct. When Mr. Pike brought the—came before our committee asking permission to go to the floor with the report, it was sent to the floor and Congressman Young offered an amendment which was authored by Mr. Milford to prevent the release of the report.

The House, by majority of over two-to-one, said no, the report could not be released.

The members of the select committee who have testified seemed to feel that whatever the committee did was fine, despite the fact that the whole House said no. And other committees, such as the judiciary, making—holding hearings, rather, having in their possession classified and secret material, had such regulations that that was not permitted outside the chamber; that nothing could be leaked, so to speak.

And I am amazed at the looseness of this material which was handled by the select committee and the way it was handled, each member having a different opinion of what is classified, secret, what is not classified and what is not secret.

It would seem to me that once the material is so classified it is not up to this member or any member to declassify it.

Mr. HAYES. No, I quite agree with you, Mr. Quillen. You of course have, I think, stated the case correctly as to the source of the select committee's authority and as to what had to be done later on.

What I mean when I say in a vote on whether or not that vote was conditioned somehow, my vote was not conditioned on whether to have a report or not to have a report on some condition what the Rules Committee might or might not do. I simply had to, as I would in any other committee set of circumstances, vote on what that committee's report ought to look like, and that is the way I voted. And that is what I did do.

Now, as far as the technical way in which Mr. Milford's substitute was later presented and how the House expressed its will, you are correct and that is right, but that was no consideration as far as my original vote.

I have no objection to the House's 2-to-1 expression not to release it, no objection procedurally that is, and no objection within the rules

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of the House. I don't object to that at all. But what I do believe very sincerely is that the report does not endanger the security of this country any more than the report of the Senate Select Committee on Intelligence endangers the security of this country. That is my own opinion as a Member of Congress and, having balanced, I hope, the considerations that need to be balanced in the controversy.

But, no; I have no quarrel at all. As far as your observation about the method of handling material and how the Judiciary Committee did it, I might say that my reason for appearing here today with the report is in order to do it in a noncareless way and not deal with the committee's staff members, although I realize they operate in good faith. I felt it simply better to act under the full authority of both the resolution that this committee is operating under, the resolution I had to operate under when I received the materials. So I think you can readily see that it is very difficult to handle these materials and so when we have staff people around, we can't always know where they are going with something.

I always found that the better part of wisdom is to keep control of it myself as best as possible.

Mr. QUILLEN. I certainly respect your judgment and your views and the way you voted, if that was your decision, because we all have that right.

Mr. HAYES. Yes.

Mr. QUILLEN. I also respect the way that you have brought your documents into the room under your own custody. But in prior testimony, as the gentleman before you said, the staff members brought documents to his office and he was not even there and did not know anything about it. I think they transferred at least two times to and from. And the looseness of the way the documents were handled within the select committee itself to me strikes a chord of somewhat irresponsibility.

But the job of this committee, as I see it, is to see if we can find out where the leak came from.

Mr. HAYES. Of course.

Mr. QUILLEN. Not the motives of any members.

Mr. HAYES. I understand.

Mr. QUILLEN. Unless they were certainly involved in the release of the report. But you have been asked those questions and your answers were negative.

Mr. Chairman, I have no further questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. I have no questions, Mr. Chairman.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Mr. Chairman.

May I ask a question that is not directed entirely to you, Mr. Hayes. You happen to be the one in the seat right now. But I have heard others before you say that I did not think this report was harmful to national security, or words to that effect.

Mr. HAYES. That is right.

Mr. SPENCE. And what keeps nagging at me is, how do you know? What do you base it on?

Mr. HAYES. I base it on gathering the testimony together as a whole as presented to us. I base it on my view of what the interests are to be balanced.

I felt that there was a public interest being expressed through the Congress in investigating our various intelligence agencies, and in trying to get a grip on how and in what manner we could have some public control over the way they operated or where alleged to have operated, and in order to improve their effectiveness. And what I found instead was that there was an absolute and total resistance on the side of the executive branch to cooperate at all in that effort and I think a general kind of fear that somehow or other we were treading on ground that just was not our province.

And I also found that there was a lot of evidence in the use of the classification system in a very loose and casual way; for instance, documents stamped "Classified" that were no more dangerous than a fudge recipe would be.

So I really believe it is a matter of individual judgment. So how did I know? Well, unfortunately, I got elected to know, I guess. So I just had to go and know.

Mr. SPENCE. The fact that you were elected, does that give you enough knowledge, background, and expertise and so forth?

Mr. HAYES. No; it gave me the responsibility, Mr. Spence.

Mr. SPENCE. That is not all an individual would need to make a judgment on whether or not something would be harmful to national security?

Mr. HAYES. No; not an individual. I had to make it in concert with the Congress and within the rules of the committee, within the rules of the Congress itself, within the framework of the documents that set up my charge. So I certainly feel no individual responsibility, nor do I think I have one, to overcome any of that.

Mr. SPENCE. Do you not think something that could be perfectly meaningless and harmless if you read it, or I read it or somebody in the public read it, could be very important to a trained agent who needs this little piece of information to fill out the overall puzzle?

Mr. HAYES. Of course, I will concede that; yes.

Mr. SPENCE. That is why I say I do not think I am qualified and I think I deal with more of these things than you do.

Mr. HAYES. I understand.

Mr. SPENCE. I do not think anybody else up here is qualified to sit up here and say all these pieces of information are of no use to any foreign government. I just sit back in amazement when somebody tells me they have enough expertise to deal with all these things——

Mr. HAYES. I certainly don't claim to have that expertise.

On the other hand, what I found was that something that one day was necessary to the national security and could not be resolved, I was reading the next day in my newspaper, and sometimes released by those who had done the original classification job in the first instance.

So it made me wonder whether they were really telling me the truth the day before, that is the problem.

Mr. SPENCE. At least they might have had some information, they must have had when they classified it originally, which does not have much bearing now so they are going to declassify it or leak it or even make it public in a speech, but at least they see no further need for that. But they were the ones that originally did it.

I do not want the responsibility of any chance of endangering this country by making some vote, thinking I have all this wisdom and knowledge that I can decide for myself, you know——

Mr. HAYES. I wanted to be sure and assure you that never once did I consider it my personal responsibility to make that as a personal decision. It was always within the context as a Member of Congress acting in concert with fellow committee members and after hearing the debate.

I think that is the only way I know to execute the responsibilities we have. We probably differ on how we do.

Mr. SPENCE. Thank you.

Mr. FLYNT. The Chair is informed that the next witness to appear desires to be heard in executive session. In view of the time frame under which we are operating, with a rollcall in progress, I recognize the gentleman from South Carolina for a motion.

Mr. QUILLEN. The gentleman wanted to say something.

Mr. FOLEY. If I could ask a question right here, would you indulge me?

Mr. FLYNT. I will certainly protect the gentleman, but I do not want to lose a quorum.

Mr. SPENCE. Pursuant to rule XI (2) (k) (5), I move we go into executive session at this time——

Mr. FLYNT. No; immediately following the testimony of Mr. Hayes.

Mr. SPENCE. Immediately following the testimony of Mr. Hayes.

Mr. FLYNT. Is there discussion of the motion? This is a motion which should be made in public session, must be voted on in public session, and the vote must be taken by rollcall with a quorum present.

The question is, Shall the committee go into executive session following the testimony of Representative Hayes?

Staff Director will call the roll.

Mr. SWANNER. Mr. Flynt?

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence?

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price?

(No response.)

Mr. SWANNER. Mr. Quillen?

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague?

(No response.)

Mr. SWANNER. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert?

(No response.)

Mr. SWANNER. Mr. Quie.

(No response.)

Mr. SWANNER. Mr. Foley?

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell?

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett?

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran?

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, eight members vote aye, four members absent and not voting.

Mr. FLYNT. On this recorded rollcall vote, a quorum being present, the ayes are eight and the nays are none. Accordingly, following the testimony of Mr. Hayes of Indiana, the committees will reconvene in executive session.

The Chair recognizes the gentleman from Washington.

Mr. FOLEY. Mr. Hays, I only have 1 or 2 minutes before we have to go. I want to reiterate what I think you have already testified to in your main presentation.

When you were considering, along with the committee, the questions of objection regarding making public of certain information drawn from classified documents, did you feel that you had a clear expression from the executive agencies, Mr. Rogovin and others, as to the sensitivity of the documents and the general reason why they felt the documents should not be made public, or elements of the document?

Mr. HAYES. They made me understand that they pretty much objected to everything in toto. They would like to just not have a report. That was the impression I had and they can document it.

Mr. FOLEY. Were you aware of the source of their objection or the purposes of the original classification?

Mr. HAYES. No, they made no specifications.

Mr. FOLEY. Whether it was protection of intelligence sources or some other reasons?

Mr. HAYES. Yes, that would be one instance. They would make other specific things. But certainly they did not make a blanket objection. But my impression was that they had a blanket objection to the report.

And I also felt that at that point they would move as aggressively as possible not to have a report. That was my opinion.

Mr. FOLEY. Did you feel it was possible for the committee, in your judgment, to discharge its responsibilities to the House in conducting the investigation of the intelligence services that it had been charged to do if it were to allow the executive branch to hold an absolute veto over the character of the report and all elements of it?

Mr. HAYES. No, we could not. That was my opinion and I think the opinion of the majority.

Mr. FOLEY. Thank you.

Mr. FLYNT. Thank you very much, Mr. Hayes.

Mr. HAYES. Thank you very much.

Mr. FLYNT. We appreciate your producing the documents for the testimony which you have given to this committee.

Mr. HAYES. Yes, sir.

Mr. FLYNT. The committee will recess until the conclusion of the rollcall vote now in progress in the House and will reconvene in executive session in room 2216 immediately following the vote now in progress.

[Whereupon, at 4:45 p.m., the committee proceeded to executive session.]

[The committee returned to public session.]

Mr. FLYNT. The committee will come to order.

Mr. HUTCHINSON. I move the committee now adjourn.

Mr. FLYNT. You have heard the motion. As many as are in favor say aye.

[Chorus of ayes.]

Mr. FLYNT. Opposed, no.

[No response.]

Mr. FLYNT. The ayes have it and the committee stands adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 6:42 p.m., the committee adjourned to reconvene at 10 o'clock Wednesday morning, July 21, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

WEDNESDAY, JULY 21, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Teague, Hébert, Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, Miss Jan Loughry, staff members; Robert Carr, associate counsel.

Mr. FLYNT. The committee will come to order. For the purposes of taking testimony and receiving evidence, a quorum is present.

Call your first witness.

Mr. MARSHALL. All right.

Call Mr. Oliphant.

Mr. FLYNT. Mr. Oliphant, will you raise your right hand, please? You do solemnly swear that the testimony that you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. OLIPHANT. I do.

TESTIMONY OF JAMES B. F. OLIPHANT, FORMER COUNSEL, SELECT COMMITTEE ON INTELLIGENCE

Mr. MARSHALL. Would you state your name, please, sir, so you may identify yourself for the record?

Mr. OLIPHANT. My name is James B. F. Oliphant.

Mr. MARSHALL. Mr. Oliphant, where do you presently live?

Mr. OLIPHANT. I am presently living in Tallahassee, Fla.

Mr. MARSHALL. What is your employment there, sir?

Mr. OLIPHANT. Presently with the civil litigation division of the attorney general's office of the State of Florida.

Mr. MARSHALL. Now, were you a member of the staff of the Select Committee on Intelligence, House Select Committee on Intelligence?

Mr. OLIPHANT. Yes, sir, I was.

Mr. MARSHALL. What was your job title there?

Mr. OLIPHANT. I was counsel with the select committee, and in that capacity I worked with the investigation of domestic intelligence.

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Mr. MARSHALL. When did you join the select committee?

Mr. OLIPHANT. Well, I was asked by Congressman McClory to come up and work with the committee, and he asked me to be here in Washington on April 7, 1975.

Mr. MARSHALL. Of what year, sir?

Mr. OLIPHANT. 1974, 1975, whatever year it was—1975. So I got up here in April 1975, and the committee did not, however, get underway until May 15. I was there, and I was there until its conclusion.

Mr. MARSHALL. Who was your immediate superior on the select committee?

Mr. OLIPHANT. Mr. Field.

Mr. MARSHALL. Did you report directly to Mr. Field?

Mr. OLIPHANT. Yes, sir.

Mr. MARSHALL. Was that true during the time you served on the select committee staff?

Mr. OLIPHANT. Yes.

Mr. MARSHALL. What background and experience did you bring to the select committee and the duties you were assigned?

Mr. OLIPHANT. Well, since graduating from law school, I had worked with the U.S. Department of Justice for 3½ years as a special attorney with the Organized Crime and Racketeering Section of the Criminal Division, at which time I had been tasked with organized crime, political corruption investigations, presentations to grand juries, and trials of those cases. And after that time, I resigned from the Justice Department in order to go to the Virgin Islands to become chief counsel for the Joint Narcotics Strike Force—this was of the Territorial Government of the Virgin Islands—in which capacity I recruited the undercover agents, supervised the narcotics investigations and prosecuted a large number of those cases. Subsequently I became chief of the criminal division of the attorney general's office of the Virgin Islands. I was there for a total of 3 years, during which time I took a leave of absence from my duties as chief of the criminal division to come up and work with the House impeachment inquiry staff. And that is how I met Congressman McClory, and I believe that is why Congressman McClory asked me to come and work on the staff.

Mr. MARSHALL. Now, Mr. Oliphant, you are appearing here under subpoena, is that right?

Mr. OLIPHANT. That is correct.

Mr. MARSHALL. Prior to the hearing, you have received copies of House Resolutions 1042 and 1054, as well as a copy of the rules of this committee, investigative procedures of this committee, and a copy of the Chairman's opening statement, is that right?

Mr. OLIPHANT. That is correct.

Mr. MARSHALL. Do you have a written statement that you wish to give to the committee?

Mr. OLIPHANT. No, sir, I do not. I did not receive a copy of the opening statement until I guess right now, if this is it. I do not have an opening statement. It was my understanding, after talking with the staff investigators, that I would just answer questions.

Mr. MARSHALL. Do you have any oral remarks that you wish to deliver to the committee at this time?

Mr. OLIPHANT. No, sir; I do not.

Mr. MARSHALL. Now, you have turned over to the staff of this committee all of the documents called for in the subpoena, have you not?

Mr. OLIPHANT. Yes, sir, I have.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence, or classified information, or evidence which may tend to defame, degrade or incriminate any person, would you please advise this committee in a timely fashion so that it can take appropriate action under the rules of the House of Representatives?

Mr. OLIPHANT. Yes, sir.

Mr. MARSHALL. Mr. Oliphant, in your duties as counsel to the select committee, during the time you were present on the select committee staff, did you have an opportunity to observe and participate in the various security rules and procedures which had been adopted by the select committee to secure classified information and prevent either unauthorized disclosure to persons outside the select committee?

Mr. OLIPHANT. Yes, sir.

Mr. MARSHALL. Could you tell us your observations with regard to whether the rules and regulations adopted by the select committee were followed?

Mr. OLIPHANT. Were what—excuse me?

Mr. MARSHALL. Were followed.

Mr. OLIPHANT. Well, I would say that they were not. The security was very, very lax. I could contrast this with the way it was on the House impeachment inquiry staff, where there was a top security, where there were policemen that logged you in and out. We had that. But we did not have—once you were logged in, it was almost possible to walk anywhere within the confines, without being escorted by anyone else. This was at the House Select Committee on Intelligence. Furthermore, we had an unfortunate situation with our files. The people that were in charge of the files were very goodhearted, and worked very hard. Unfortunately they did not have a background in either library science or security. This wasn't their fault. Miss Hess, who was in charge of this, wasn't hired to be a security officer, or a librarian. But after the committee got rid of Mr. Sims, who did have a good background in security, Mr. Field appointed her.

Mr. MARSHALL. When was that, sir, do you recall?

Mr. OLIPHANT. When did they get rid of Mr. Sims—in July, I believe.

Mr. MARSHALL. Of what year?

Mr. OLIPHANT. 1975.

Mr. MARSHALL. All right.

Mr. OLIPHANT. And Miss Hess did the best that she could. But they were understaffed, they were underfinanced, and as a result, the files quickly fell into disarray. There was no adequate record of what was being logged in and what was being logged out.

So people who were trying to work from these files and were trying to use the materials, fell into the practice of keeping materials in their own desks, materials which they thought they would have to use. And so that any kind of an effective security measure, of knowing where the documents were, was effectively boycotted.

Mr. MARSHALL. Let me interrupt you if I may for a moment here. When you say people fell into the practice of keeping materials in their own desks—

Mr. OLIPHANT. Yes, sir.

Mr. MARSHALL [continuing]. Were some of these materials classified materials?

Mr. OLIPHANT. Certainly.

Mr. MARSHALL. Do you recall what the classifications were of some of them?

Mr. OLIPHANT. I would say it was top secret material that was kept in desks.

Mr. MARSHALL. All right. Where were these desks located with regard to the secured area of the select committee's spaces?

Mr. OLIPHANT. Well, they were located outside of the secured area, but they were not located in an area which was accessible to the general public. I mean the only people that were there were people on the staff, and people that had top secret clearances.

Mr. MARSHALL. As I understand what you are saying, then, the personal files, if we may refer to them in that way, which contained classified material kept in desks, was not—were not in the space where classified materials were supposed to be, and yet they were within the space protected by some sort of security guard, is that correct?

Mr. OLIPHANT. That is correct. They were.

Mr. MARSHALL. So there was limited access to those desks.

Mr. OLIPHANT. Yes, sir; there was, definitely.

Mr. FLYNT. If counsel would suspend, I am going to suggest that the committee suspend in order that the members can respond to a quorum call in progress, with the understanding we will return immediately.

[Voting recess from 10 a.m. to 10:25 a.m.]

Mr. FLYNT. The committee will come to order.

Mr. Oliphant, you will resume the stand.

Mr. MARSHALL. Mr. Oliphant, I remind you that you are still under oath.

Mr. Oliphant, are you familiar with an undated memorandum written by Jackie Hess to Searle Field in connection with security procedures?

Mr. OLIPHANT. Yes, sir.

Mr. MARSHALL. You have examined a copy of that memorandum, have you not?

Mr. OLIPHANT. Yes, I have.

Mr. MARSHALL. I want to read from the memorandum just a paragraph and ask you, if you will, to comment on it with regard to your personal knowledge of security procedures.

To Searle from J. Hess. Copies to all staff, re: Procedures. Paragraph 1: It is my considered opinion that as staffers persist in Xeroxing multiple copies of all memos and briefing summaries as they have done, regardless of classification, it makes no sense to continue to deliver the original typed copies to my department. Since your decision has been thus far that staffers may keep personal files if necessary, and since all staffers have deemed it necessary to keep such files, plus the compilation of a private central file by one staffer, it merely wastes the time of this department and the energy of the secretarial staff to attempt to keep copies at a minimum. I suggest that all staffers be given the original typed copies initially. If they then in the spirit of total cooperation, which has been heretofore exhibited in a way inferior only to the New York World's Fair, decide

to include the central files in one of their massive lists of Xerox copies to be made, I would handsomely appreciate it.

Can you comment on that, sir, as to the time that the memorandum was issued, and with regard to whether it accurately describes the manner in which security classified information was handled?

Mr. OLIPHANT. Well, Mr. Marshall, and to the time of when it was issued, I have no way of knowing that, because it is undated. I would assume that it was issued shortly after we moved from the Cannon Building to our space in the Rayburn Building, which was, I believe, in July, the end of July, to my recollection. So I would imagine that that memorandum came out sometime in August or September.

Mr. MARSHALL. 1975?

Mr. OLIPHANT. Of 1975, sir. It could have been later. But I would assume that is approximately when it came out.

Now, as to whether it accurately related the picture in its totality, I would have no way of knowing completely. As far as my actual personal knowledge goes, I know that people were xeroxing their own copies, that not everything which was sent in by the intelligence community was reaching the file room immediately. Sometimes some of the stuff was intercepted.

Now, you also have to realize that while it did reflect the situation, whether Miss Hess may have exaggerated in her memo is something I would not know, and you would have to ask her.

But you have to remember that she was under a lot of pressure. Those people, as I said before, were understaffed and underfinanced, and they were doing—they were under a lot of pressure to get these briefing books out every time there was a session, they were trying to log stuff in, they were doing their best to set up a library system, and they were being thwarted, and they were being thwarted by people that were not acting really with evil intent, they were people also that did not have too much experience with a library system—

Mr. MARSHALL. Excuse me, Mr. Oliphant, if you will suspend just a minute.

Mr. FLYNT. At this time I will recognize Mr. Spence for a motion.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5), I move we go into executive session at this time.

Mr. MARSHALL. Mr. Chairman—my staff has interviewed this witness, and it is my judgment that the committee ought to entertain this motion and consider it at this time.

Mr. FLYNT. You have heard the motion that we go into executive session.

This is a motion which must be made in open session, with a quorum present. Under the rules of the House, further, a recorded vote is required.

The question is, Shall the committee now go into executive session. Is there any discussion? If not, the staff director will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence?

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

Mr. PRICE. Aye.

Mr. SWANNER. Mr. Quillen.

[No response.]

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley.

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, nine members vote aye, three members absent, not voting.

Mr. FLYNT. On this vote, taken in open session, a quorum being present, the yeas are 9, the nays are none. Accordingly, the committee resolves itself into executive session, which will convene in room 2360. We will repair to 2360, and then return to this room as soon as the business of the executive session has been completed.

[Whereupon, at 10:35 o'clock a.m., the committee proceeded in executive session in room 2360.]

[The committee resumed in open session at 3:40 p.m.]

Mr. FLYNT. The committee will come to order in open session.

Before we announce the next witness, Mr. Marshall, would you make a statement which we had assured a previous witness that we would make in open session.

Mr. MARSHALL. For the benefit of the record, the committee's decisions concerning when to receive testimony in public session and when to receive testimony in executive session are decisions solely of the committee, in accordance with the rules of the House of Representatives. They are not decisions of the various witnesses who have either been invited or subpoenaed to appear.

We simply wanted to make it clear that the committee made the decision concerning the executive session, and not anyone else, the witnesses or otherwise.

Mr. QUIE. Mr. Chairman—the witness may request the committee, and then the committee makes its decision, is that correct?

Mr. FLYNT. That is correct.

Mr. FLYNT. Mr. McClory, would you rise and raise your right hand, please.

You do solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MCCLORY. I do.

**TESTIMONY OF HON. ROBERT McCLORY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ILLINOIS, ACCOMPANIED BY
PAUL A. AHERN, LEGISLATIVE ASSISTANT**

Mr. FLYNT. The committee is pleased to welcome to this session of the committee our distinguished colleague, the Honorable Robert McClory, a representative of the State of Illinois. Mr. McClory served as the ranking minority member of the House Select Committee on Intelligence. He is appearing here at the invitation of this committee.

We welcome you, Mr. McClory.

Do you wish to make a statement before questions are asked by counsel and members of the committee?

Mr. McCLORY. I would, Mr. Chairman.

I appreciate this opportunity to come and help lay on the record facts that I think are relevant to the committee's inquiry.

First of all, I would like to commend the committee on the manner in which it is undertaking this investigation and to state that I read verbatim the statement offered in open session by the chief of staff, Mr. Bowers, and I certainly want to commend to you the apparent thoroughness of the report that he made and the accuracy of it, insofar as I am concerned.

I do have a special interest in this subject of the inquiry.

First of all, I want to emphasize that I supported the original investigation, the original House Resolution 138, which was adopted in February 1975, and then supplanted by House Resolution 591, adopted in July 1975, to establish this select committee, and served throughout as the ranking member. I have particular reference to section 6 of that resolution, which required our committee to institute and carry out rules and procedures for guarding the classified information which the committee would necessarily receive.

Furthermore, I want to point out that it was on my initiative, my individual initiative, that I went to the President and urged the President to direct the various intelligence agencies to supply the committee with such classified information as the committee might require. Prior to that time, the committee was receiving very, very little with respect to the kinds of information that we required.

At a meeting with the President on Wednesday, September 24, I handed to the President a memorandum in which I stated that certain subpoenas theretofore issued by the committee should be complied with and that the intelligence information requested should be supplied to the committee pursuant to procedures which the committee had adopted.

Thereafter, 2 days later, on the 26th of September, together with the chairman of the committee, Mr. Pike——

Mr. FLYNT. Mr. McClory, would you suspend briefly? Mr. Foley, would you preside during my temporary absence?

Proceed, Mr. McClory.

Mr. McCLORY. On Friday, September 26, the chairman of the committee, Mr. Pike, the Speaker of the House, Mr. Albert, the Director

of Central Intelligence, Mr. Colby, the Secretary of State, Dr. Kissinger, the Minority Leader of the House, Mr. Rhodes, and I, as well as several others—I think Don Rumsfeld and Phil Buchen, and one or two others—met with the President in the Oval Room of the White House to discuss the work of our committee and to develop a procedure by which classified and other secret information might be received by the committee for the purposes of our committee investigation.

In connection with discussing these procedures, it was understood that certain types of information would be omitted, such as diplomatic exchanges and identities of individual agents, and a few things such as that—but there would be a right to verify with respect to those omissions.

It was further understood and agreed that the intelligence agencies would have the right to comment with respect to any proposed declassification or publication of information which the committee would receive. And in the event of disagreement between the committee and the agencies, the President would have the right personally and in writing to certify that national security interests were involved and thereby preclude the committee from making public materials or information which it had received, subject only, however, to the further exception that the committee would have a right to submit the issue to the court for final determination.

Let me say that prior to the time that we entered into this agreement, it was Mr. Pike's position, and he stated this to me flatly, that he felt we were not going to get the information that we needed, and his recommendation was that we should issue subpoenas and undertake to enforce the subpoenas, and get what he called a definitive ruling of the court, of the Supreme Court. And it was partly because of my experience as a member of the House Judiciary Committee during the impeachment proceeding, in which I saw what happened to a former President when he was compelled by an order of the Supreme Court of the United States to divulge information, which up to that time he had withheld, that I felt it was extremely important for this President not to be placed in a position where he would be subjected to litigation pursuant to which he might be compelled to at some later date divulge information which was being withheld.

It was largely on that basis that I urged leadership on the Republican side in the House, and the President individually, to voluntarily provide this information, under procedures which would protect the secrecy and confidentiality of the information we would receive.

The President gave his assurance of full cooperation to the committee on the basis of this understanding.

Thereafter, the agreement reached with the President was presented to the full committee at a formal meeting, and on October 1, 1975, by a vote of 9 to 3, it was agreed that these procedures would apply with respect to documents, testimony, and other materials received from the intelligence agencies which were of a classified, secret or top secret character.

The agreement and policy of our committee were summarized in the words of the chairman of the committee, Mr. Pike, as follows:

"I am afraid that if we accept these documents under these conditions, we are in effect setting a policy for no other committee except

this committee, but I do think we are setting a precedent and a policy for this committee."

And that is at transcript page 2234.

Mr. Chairman, the entire transcript of the committee meeting at which this procedure was formally and solemnly agreed upon is available to your committee staff.

I should point out that information began to flow promptly, and the Select committee received large volumes—I think it totalled 89 linear feet of documentation that we received, 90,000 pages of material from the CIA alone.

At the time of receiving this information, the various intelligence agencies sent a covering letter in which it was stated specifically, "This is forwarded on loan with the understanding that there will be no public disclosure of this classified material nor of testimony, depositions, or interviews concerning it without a reasonable opportunity for us to consult with respect to it. In the event of disagreement, the matter will be referred to the President. If the President then certifies in writing that the disclosure of the material would be detrimental to the national security of the United States the matter will not be disclosed by the committee except that the committee would reserve its right to submit the matter to judicial consideration."

The select committee adhered to this understanding and this arrangement throughout our hearings, and even up to the time when it was proposed that we should make public three statements of information which were recommended by Mr. Johnson. Of the three statements, two were approved by the committee and one was not. They were all submitted to the President for his consideration. He sent a letter to us stating that national security interests were involved, and we did not publish the material.

Now, what happened when we got to that stage and it came to the question of preparing the committee's report, I do not know. The staff undertook, and particularly the staff director undertook, to include anything and everything insofar as I could see, in the draft committee report—classified and unclassified material. And this was contained then in a draft report which the committee members received under circumstances which have been described on January 19, 1976.

It is my feeling that the Congress of the United States and particularly committees of the House charged with an investigation of intelligence activities should be trusted to receive and guard sensitive information. In my opinion, the President and the intelligence agencies of our Nation have expressed that trust in the delivery of much or all of the classified information which the select committee received. To merit that trust, however, we were required to abide by the conditions under which we received the materials which came into the committee's possession. To repudiate that understanding or to interpret it in such a way as to say that it is no longer applicable because the hearings have ended is in my view a position unworthy of the select committee or of the House of Representatives.

The various intelligence agencies raised a total of 240 objections to the draft report that was submitted. And we went over those objections. They are itemized here. Some changes were made and oth-

ers were not made. As a matter of fact, a great deal of the sensitive and classified information which was contained in the draft report, and which I discussed with other members of the House, established with me that this kind of information was being made public for the first time—for the first time, this was embodied in a formal publication of our Federal Government.

In my opinion, the action of the majority of the committee in approving the publication of the report without first deleting all of the classified information with respect to which objection was made was a direct violation of the committee's agreement which enabled the committee to receive the information in the first place.

With respect to the furnishing or leaking of information to Daniel Schorr, I do not have any personal knowledge. I can state categorically that the information was not received from me nor from my office. I should say that when the report was delivered to my office on January 19, I was somewhat surprised that such a document would be handled so routinely. While the report was delivered directly to me by a member of the select committee staff, in at least one other case I know it was left on the committee member's desk during his absence.

Mr. Chairman, you have already received and I am certain that you will be receiving further substantial evidence establishing that very loose and inadequate security practices prevailed on the part of the select committee and certain members of the select committee staff. It might well be concluded that leaks of classified information including the leaking of the committee's final report can be attributed to this wholly inadequate security. In that respect, the select committee and particularly the committee leadership and staff director must assume a major part of the responsibility.

But, Mr. Chairman, in my opinion the most egregious deficiency of the committee was to permit the inclusion in the drafts of the final report of classified, secret, top secret and other types of sensitive intelligence information. This deficiency is a direct and probably an inevitable consequence of the deliberate violation of the conditions upon which that information was received by the select committee. A majority of the committee approved of that violation of the conditions which were attached to our receipt of that material, and the select committee's staff director in his preparation, dissemination and apparent careless handling of the report participated in the violation of the conditions.

As the evidence conclusively shows, there was a flagrant neglect and refusal to comply with the conditions specifically and solemnly set forth and agreed to in the receipt of virtually all of the intelligence materials received by the committee. Without those violations the leaking of the information through the report could not and would not have occurred.

But to assume that the receipt of this vast volume of information from the CIA and other intelligence agencies was coupled with any license or authority on our part to publish any or all of the information which the majority of the committee might unilaterally decide to include, or which the staff director and his aides might wish to use to embellish their draft report, is quite inconsistent with the solemn obligations which the committee undertook when entrusted with much

of the most sensitive and secret information affecting our national security and our Nation's welfare.

Mr. Chairman, I would be pleased to provide other evidence or respond to questions regarding this subject in executive session if the members of this committee would be interested.

Meanwhile, I wish to commend the committee for undertaking this investigation.

I hope and I firmly believe that these hearings will help restore confidence in the House of Representatives as a responsible body capable of authorizing and carrying out a task as important and as sensitive as that with which the House Select Committee on Intelligence was charged.

I might say, Mr. Chairman, that I am accompanied here today by Mr. Paul Ahern, my legislative assistant during these hearings, and he has had some part to play with regard to this. He was not privy to the confidential, the secret information, during the course of our hearings. He had some limited access to it after the report was in draft form, and he did work with Mr. Pike individually in certain changes with respect to parts of the report. And he did on one occasion handle the original report and certain additional pages and delivered those from my office to my home. That was during the weekend of the 23d-24th, I believe, at a time when we were rushing to try to resolve this whole subject.

Mr. FLYNT. Thank you, Mr. McClory. We were aware previously that you would request that we go into executive session to receive additional testimony from you, and we are advised of the substance of that testimony.

Second. I would just like to comment on your statement that you were glad that this committee had undertaken this investigation. Let me say that we did not seek this awesome responsibility, but it was thrust upon us by an overwhelming vote of the House of Representatives, and in public session let me thank you for your testimony thus far, and I will now entertain—and also for your cooperation with the committee throughout the time that this has been a subject matter under the jurisdiction of this committee.

I recognize the gentleman from South Carolina for a motion.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5), I move that we go into executive session at this time.

Mr. FLYNT. This is a motion which must be made in open session with a quorum present. This vote under the rules of the House must be taken by a record vote. I therefore ask the staff director to call the roll on the motion of the gentleman from South Carolina.

Mr. SWANNER. Mr. Flynt?

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence?

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price?

[No response.]

Mr. SWANNER. Mr. Quillen?

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague?

[No response.]

Mr. SWANNER. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert?

[No response.]

Mr. SWANNER. Mr. Quie.

[No response.]

Mr. SWANNER. Mr. Foley?

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell?

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett?

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran?

[No response.]

Mr. SWANNER. Mr. Chairman, seven members vote aye; five members absent, not voting.

Mr. FLYNT. On this vote by rollcall a quorum is present. The ayes are seven, the nays are none.

The motion is agreed to, and accordingly the committee resolves itself into executive session, and we will repair next door to room 2216.

Mr. BENNETT. Mr. Chairman, are you going to tell these people where we will repair to?

Mr. FLYNT. Yes. The committee has two additional witnesses who are standing by, and will in all probability appear before the committee immediately following the testimony of our colleague, Mr. McClory.

It is my understanding that each of these witnesses will at least begin their testimony in open session, and those in attendance on the committee can be guided accordingly, but the committee now resolves itself into executive session in the room next door.

[Whereupon, at 4:05 p.m., the committee proceeded into executive session.]

[At 5:09 p.m., the committee reconvened in open session.]

Mr. FLYNT. The committee will come to order in open session.

We would like to invite our distinguished colleague, the Hon. Jim Johnson from Colorado, to take the witness stand.

Before taking your seat, Mr. Johnson, would you raise your hand.

You do solemnly swear the testimony you will give before this committee in the matter under consideration will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. JOHNSON. I do.

TESTIMONY OF HON. JAMES P. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. FLYNT. Mr. Johnson, we welcome you before our committee. We thank you for your voluntary appearance, and counsel has some questions he will ask.

Mr. MARSHALL. Mr. Johnson, prior to the hearing you received a copy of House Resolutions 1042 and 1054, the rules of this committee, a copy of the investigative procedure of this committee, and a copy of the Chairman's opening statement; did you not, sir?

Mr. JOHNSON. That is correct.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee, sir?

Mr. JOHNSON. No, I don't.

Mr. MARSHALL. Do you have an oral statement you wish to make to the committee?

Mr. JOHNSON. No. I came here to answer any questions you might desire to propound. I have already talked to the investigators and told them everything I know. I am sure that is on file. I saw the written résumé or the written recapitulation of my testimony and I signed it; it was correct.

Mr. MARSHALL. Have you turned over to this committee staff all documents which pertain to the subject matter of this committee's investigation?

Mr. JOHNSON. I have made available to them the staff copies which I have. I didn't turn over to them the transcripts, the public transcripts of the hearing which were given to me which everybody has. We did not get transcripts of the closed executive session but so far as anything of sequence, this is all that I have.

Mr. MARSHALL. In the event your testimony may involve information or data concerning executive session of the select committee or classified information or information which may tend to defame, degrade, or incriminate any person, please call that to the attention of this committee so it can take appropriate action under the Rules of the House of Representatives.

Mr. JOHNSON, just so the record is clear, you of course were a member of the select committee?

Mr. JOHNSON. Yes, I was.

Mr. MARSHALL. As a member of the select committee were specific instances called to your attention or did you come to know about specific instances where security procedures and regulations which had been adopted by the select committee were not followed?

Mr. JOHNSON. No, I don't think so. There may be some specific examples if you have any in mind that I might comment on, but I don't think so, no.

Mr. MARSHALL. During the course of the select committee's deliberations—

Mr. JOHNSON. Other than the leak, you understand.

Mr. MARSHALL. That is what I am going to ask you about.

Mr. JOHNSON. There were occasions, of course, when information that we had received in executive session or in one case at the White House relating to the 18 recommendations by the State Department for covert operations, which we received at the White House, which almost immediately became public knowledge, some of the conversations that had taken place down there became public knowledge but that again was part of the leaking process the committee is familiar with, and who did it or why or how I can't tell you.

Mr. MARSHALL. Was there any investigation, to your knowledge, to determine the identity of leaks? That is, who was leaking and to whom in the course of the select committee's activities?

Mr. JOHNSON. There was a great deal of talk among the members about it but there was no official designation of a subcommittee. There was talk about establishing a subcommittee of the select committee.

Mr. MARSHALL. Was that done?

Mr. JOHNSON. That was not done; no.

Mr. MARSHALL. Why was it not done?

Mr. JOHNSON. It wasn't even debated in the full committee. There was just talk about it among the members.

Mr. MARSHALL. Following Mr. Schorr's exhibition of what purported to be a copy or draft of the select committee report on television on January 28, 1976, was there any effort made by the committee or staff to identify the source of Mr. Schorr's information?

Mr. JOHNSON. I don't know about the staff but there was no official effort on the part of the committee. We didn't sit in committee and discuss making an investigation of doing that.

Mr. MARSHALL. Do you know why no action was taken in that regard?

Mr. JOHNSON. No, I don't. I think that Mr. McClory and Mr. Treen had mentioned it but I don't think they brought it up—maybe Mr. Treen did bring it up at one time but I don't know. That would be part of the committee record. I am sure you would have read about it.

Mr. MARSHALL. With regard to the drafts of the report which were distributed to you as well as to other committee members, and in particular the draft of January 19, 1976, which was the initial draft or the initial first draft of the complete report, how was that distributed to you?

Mr. JOHNSON. It was in my office when I arrived that afternoon, as I recall.

Mr. MARSHALL. After January 19?

Mr. JOHNSON. Yes.

Mr. MARSHALL. Do you know to whom it was delivered in your office?

Mr. JOHNSON. It was placed on my office desk and the door was closed because my staff had instruction that they were not to have any access to any of this information. Nobody on my staff did. They were told [pointing]—here they are—when they were told what the documents were they were placed on my desk, the door was closed and when I came in that night they were there.

Mr. MARSHALL. Did you leave the report in your office that night?

Mr. JOHNSON. I don't remember. I may have. If I did I took it off the desk and put it in my safe that I had received for the duration of the committee investigation. I don't have a safe ordinarily but I got one for that purpose.

Mr. MARSHALL. Let me ask you if this refreshes your recollection. Do you recall talking with members of this committee staff and stating that the report was left on your desk overnight and was then found by you the next morning?

Mr. JOHNSON. It could have been. Whenever I talked with them it was fresh in my mind. As I say, I don't remember whether I left it on my desk overnight, that is what I did, if I didn't qualify it, because I frankly don't remember right now at this moment whether I did or did not.

Mr. MARSHALL. With regard to the draft of January 23, 1976, when it was adopted by the committee on that date, was it your expectation that draft as adopted as the final report was going to be made public?

Mr. JOHNSON. Sure.

Mr. MARSHALL. Were any advance copies to your knowledge distributed to the members of the press or to anyone else?

Mr. JOHNSON. Not to my knowledge.

Mr. MARSHALL. Was there any discussion in the committee about distributing advance copies since the report was lengthy and would require some time to assemble?

Mr. JOHNSON. Not that I remember. Our records would indicate that.

Mr. MARSHALL. I am just asking you about discussions among committee members which may not have been a part of the official record.

Mr. JOHNSON. No; I don't think that at all. I don't recall talking to anybody about releasing it to the press.

Mr. MARSHALL. Have you read the articles which appeared in the Village Voice on February 16 and February 23?

Mr. JOHNSON. Yes.

Mr. MARSHALL. In your judgment did the draft of January 23, 1976, which was adopted as the final committee report, contain information which had come from classified documents?

Mr. JOHNSON. The final draft did contain some information that came from classified documents, sure.

Mr. MARSHALL. Was the information which is contained itself classified, that is it was information which resulted in a classification in the documents from which it originated?

Mr. JOHNSON. It had been cleaned up but it came from classified information.

Mr. MARSHALL. When you say cleaned up, could you elaborate on what you mean?

Mr. JOHNSON. Well, there were countries that were involved that were not identified. If you have read the report, you know there were three examples of covert operations which were outlined in the report. The language of the report was such that they removed references to specific countries and to specific individuals in most cases that referred to foreigners, foreign officials.

Mr. MARSHALL. Were there any instances in which classified information appeared in the January 23, 1976, draft which had not been "cleaned up" or had not been otherwise summarized?

Mr. JOHNSON. There was some—there was information there that the executive branch objected to. After this original report was prepared and the executive branch had the opportunity to comment on it they came back with something like 250 or 260—I don't know; you will have that information available to you, I am sure—250 or 260 examples of what they regarded as security breaches and they wanted to have changed and we went over those individually. Mr. Kasten had the list and he presented them, and we went over them item by item and voted on them. Some of them Mr. Kasten said he wasn't going to present but we went over them and considered them.

Many of them were adopted and many were rejected. I have forgotten how many of their suggestions we did adopt but it seemed to me it was the majority of them. Once again, that information should be available to you because it is all part of the record.

Mr. MARSHALL. With regard to those you did not adopt where you disagreed, was anyone there from the executive department to present the reasons for the classification?

Mr. JOHNSON. We had asked for their comments and I can't remember whether Mr. Colby or somebody from the CIA was present all during the time but we certainly had the benefit of their observations.

Mr. MARSHALL. And the committee felt they had the authority to disagree with those observations and to in effect declassify material if in its judgment there was no need for the classification?

Mr. JOHNSON. We felt we had to make our report in accordance with our mandate from the Congress.

Mr. MARSHALL. Do you think as a committee member you could have made your report in line with the mandate from the Congress without declassifying those instances in which you disagreed with the original classification?

Mr. JOHNSON. Not in a way that would have been meaningful to anybody that read it.

Mr. MARSHALL. Did the committee when it adopted its report on January 23 ever consider filing the report on a restricted basis with Congress so it would not become public knowledge?

Mr. JOHNSON. Yes. I don't know whether you can say the committee officially did or not. I had received a call from Mr. Rogovin, counsel from the CIA, discussing that very matter, and as I recall I think I brought it up in a committee meeting or some time perhaps before the committee had officially been brought to order, and there wasn't any interest in doing that.

Mr. MARSHALL. Was any concern expressed by any committee member that there might be some harm to the defense of this country if that procedure was not followed?

Mr. JOHNSON. Oh, certainly. The four members who voted against making the report to the Congress made that point.

Mr. MARSHALL. Mr. Johnson, did you give the select committee's report or any copy of a draft of that report or any part of the report to Mr. Schorr or to any other person?

Mr. JOHNSON. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. JOHNSON. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee report or any part thereof?

Mr. JOHNSON. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. JOHNSON. No, sir.

Mr. MARSHALL. Did you give the report or make any part of the select committee's report available to anyone outside the Select Committee on Intelligence?

Mr. JOHNSON. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. JOHNSON. No, sir.

Mr. FLYNT. Mr. Foley.

Mr. FOLEY. I have no questions.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. No.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. No.

Mr. FLYNT. Mr. Johnson, the committee thanks you for your appearance, and while we do not anticipate that you will be recalled, if the committee should of necessity recall you, we will give you as much notice as we can. Thank you very much, Mr. Johnson.

Mr. Kirschstein.

You do solemnly swear the testimony you will give before this committee in the matter under consideration will be the truth, the whole truth and nothing but the truth so help you God?

Mr. KIRSCHSTEIN. I do.

TESTIMONY OF FRED KARL KIRSCHSTEIN, FORMER INVESTIGATOR, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY JANE McGREW, COUNSEL

Mr. MARSHALL. Will you state your name and the name of the person accompanying you.

Mr. KIRSCHSTEIN. Yes, sir.

Mr. MARSHALL. Do you have a written statement that you wish to file with the committee at this time?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you have an oral statement which you wish to make to the committee?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information, evidence which may tend to defame, degrade, or incriminate any person, please call that to the committee's attention so it may take appropriate action under the Rules of the House of Representatives.

Mr. KIRSCHSTEIN. Yes, sir.

Mr. MARSHALL. Do you understand?

Mr. KIRSCHSTEIN. Yes, sir.

Mr. MARSHALL. Mr. Kirschstein, what were your duties with the Select Committee on Intelligence?

Mr. KIRSCHSTEIN. I was a staff investigator on the Foreign Intelligence Task Force working under Mr. Jack Boos. My duties broadly were to conduct interviews with executive branch officials, to receive documents, analyze documents, prepare reports, drafts, charts, and so forth, and present my findings to the committee members.

Mr. MARSHALL. When did you first begin those duties with the select committee?

Mr. KIRSCHSTEIN. June 1.

Mr. MARSHALL. Of what year?

Mr. KIRSCHSTEIN. 1975.

Mr. MARSHALL. When did you take those duties?

Mr. KIRSCHSTEIN. When the committee was disbanded.

Mr. MARSHALL. Which was—

Mr. KIRSCHSTEIN. I believe February, I think, of 1976.

Mr. MARSHALL. In the course of your duties did you have occasion to handle classified information?

Mr. KIRSCHSTEIN. Yes, sir.

Mr. MARSHALL. Had you any experience in handling classified information prior to assuming duties with the select committee?

Mr. KIRSCHSTEIN. Yes, sir, I had 4 years with Air Force Intelligence.

Mr. MARSHALL. Based upon your experience with the Select Committee on Intelligence, do you know of any specific instances where rules regarding security regulations and procedures were violated by the select committee or its staff?

Mr. KIRSCHSTEIN. No, sir, I don't believe so.

Mr. MARSHALL. Did you ever take any classified information home with you?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you know of anyone who did that?

Mr. KIRSCHSTEIN. No, sir, I do not. Not to my direct knowledge. I was present the other day at the testimony of other witnesses and I know that was discussed but I am not sure that was classified information.

Mr. MARSHALL. Were you, as a staff member, aware of leaks from the select committee during the course of its deliberations up to and including the adoption of the drafts of reports?

Mr. KIRSCHSTEIN. No, sir; I was not.

Mr. MARSHALL. You are not aware that the New York Times and other publications had articles concerning the select committee's work?

Mr. KIRSCHSTEIN. Yes, I was aware of that. I thought the question was whether I thought the leaks came from our committee. I am not sure that is the case.

Mr. MARSHALL. Do you have any idea where those leaks came from?

Mr. KIRSCHSTEIN. No, sir; I do not. No personal knowledge whatsoever. No, sir.

Mr. MARSHALL. Was there any effort made to your knowledge by the select committee or its staff to investigate the source of leaks to the press or persons outside the select committee?

Mr. KIRSCHSTEIN. On each occasion there was generally a discussion amongst the members on what could be done but I think the same assumption which I stated previously was the main problem; no one was sure whether the leaks came from our staff or whether they came from perhaps the executive branch, and I think that is the main reason why no investigation ensued.

Mr. MARSHALL. Was any effort made to determine from whence the leaks came?

Mr. KIRSCHSTEIN. None other than general discussions.

Mr. MARSHALL. Did you ever see any members of the media inside the select committee's working space?

Mr. KIRSCHSTEIN. Yes, sir. On several occasions in the exterior secretarial office which was the beginning office. Coming in the door I had occasion to notice journalists in that area. I don't recall seeing any in the other areas although—yes, I do recall seeing Mr. Dan Schorr on one occasion, but I couldn't place a date on that.

Mr. MARSHALL. Could you place a year on it?

Mr. KIRSCHSTEIN. No, sir. I don't believe I could.

Mr. MARSHALL. You could not tell us whether it was 1975 or 1976?

Mr. KIRSCHSTEIN. I think it was probably 1976.

Mr. MARSHALL. Could you place a month on it?

Mr. KIRSCHSTEIN. No, I am sure I couldn't. Not at all.

Mr. MARSHALL. You could not tell us whether it was January or February 1976?

Mr. KIRSCHSTEIN. No, sir, I could not. I am extremely bad on dates. If you ask me when I got my master's degree I don't know whether I could remember that at this moment.

Mr. MARSHALL. If the select committee's report was adopted on January 23, 1976, could you tell us whether you saw Mr. Schorr in the committee spaces before or after the adoption of the report?

Mr. KIRSCHSTEIN. I am sure it was before.

Mr. MARSHALL. Would I be correct in stating that if you are sure it was before January 23, 1976, then it was in 1976, that it was sometime during the month between January 1 and January 23, 1976?

Mr. KIRSCHSTEIN. Yes, sir, it could have been. It could have been 1975, also. I just am not sure. I might have seen him on more than one occasion.

Mr. MARSHALL. On the particular occasion that you did see him, was this during the normal working hours of the committee or was it after normal working hours?

Mr. KIRSCHSTEIN. Normal working hours of the committee.

Mr. MARSHALL. Sometime during the day?

Mr. KIRSCHSTEIN. Yes.

Mr. MARSHALL. Where was it precisely when you saw him?

Mr. KIRSCHSTEIN. The only occasion which is really clear in my mind, he was two steps inside the door from the secretary's office into the main office.

Mr. MARSHALL. Apparently you have a better memory of distance than dates.

Mr. KIRSCHSTEIN. I think he was walking out as he was standing there.

Mr. MARSHALL. Was he inside the secure area where a policeman was posted for logging persons in and out?

Mr. KIRSCHSTEIN. Yes, he was.

Mr. MARSHALL. Was he within the space where classified information was kept?

Mr. KIRSCHSTEIN. Yes, I would say two steps inside.

Mr. MARSHALL. Who else was there?

Mr. KIRSCHSTEIN. I don't recall.

Mr. MARSHALL. Do you recall if anyone else was there?

Mr. KIRSCHSTEIN. I am sure there was.

Mr. MARSHALL. I don't mean to quarrel with you. Do you have any recollection of anyone else being there?

Mr. KIRSCHSTEIN. No, sir, I do not.

Mr. MARSHALL. Given your familiarity with that space, was there a particular person assigned to responsibility for that space during the working hours of the committee?

Mr. KIRSCHSTEIN. There was a particular person assigned the responsibility to check people in and out.

Mr. MARSHALL. In and out of that space?

Mr. KIRSCHSTEIN. Yes.

Mr. MARSHALL. Who was that?

Mr. KIRSCHSTEIN. That was the security officer as you came into the offices. Anyone coming into the offices would sit on a couch until they were signed in and then they would take the person generally on back to the secure area.

Mr. MARSHALL. As I understand your testimony, you said you saw Mr. Schorr approximately two steps into the area where classified information was kept?

Mr. KIRSCHSTEIN. Yes, sir.

Mr. MARSHALL. Was there anyone guarding that area with responsibility to assign persons in or out of that area?

Mr. KIRSCHSTEIN. No.

Mr. MARSHALL. Do you recall seeing any classified information out on display in that area at the time you saw Mr. Schorr?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. What was Mr. Schorr doing when you saw him?

Mr. KIRSCHSTEIN. Standing.

Mr. MARSHALL. Arms down to his sides?

Mr. KIRSCHSTEIN. To the best of my recollection, yes.

Mr. MARSHALL. Was he simply standing and staring or was there some activity he was undertaking?

Mr. KIRSCHSTEIN. I don't recall, sir. It's been too long. It didn't make any impression on me other than there was Dan Schorr.

Mr. MARSHALL. Was Mr. Schorr's appearance within the spaces sufficiently common that he was simply like another piece of equipment within the space?

Mr. KIRSCHSTEIN. Oh, no.

Mr. MARSHALL. What I am trying to get at, I don't mean to be facetious, but was it not unusual to you to find a newsman within the committee space at the point where you described Mr. Schorr?

Mr. KIRSCHSTEIN. It wasn't a frequent occurrence, no, sir, but the rule was that if you signed a person in and escorted him back it was all right as long as he was escorted at all times.

Mr. MARSHALL. Did you see an escort for Mr. Schorr?

Mr. KIRSCHSTEIN. I don't recall who it was, no. I am sure other people were there. It's just not clear in my mind who it was or even the time-frame that it was.

Mr. MARSHALL. Was it Mr. Field?

Mr. KIRSCHSTEIN. I do not know, sir.

Mr. MARSHALL. Did Mr. Schorr have anything in his hand on this occasion?

Mr. KIRSCHSTEIN. Not that I recall.

Mr. MARSHALL. Were there other instances where you saw media persons or any other person outside the select committee within this same area that you saw Mr. Schorr?

Mr. KIRSCHSTEIN. Any other person?

Mr. MARSHALL. Yes. Any other person outside the select committee staff.

Mr. KIRSCHSTEIN. Yes, sir.

Mr. MARSHALL. Do you know who those persons were?

Mr. KIRSCHSTEIN. On many occasions, sir, when we would interview witnesses in our offices we would check them in and take them back into the room in which they were going to be interviewed, and so on all those occasions just a whole variety of people would be taken back, escorted back for the interview sessions. It wasn't anything unusual.

There might be some—I think perhaps the difficulty here is in clarifying what I consider to be a secure area.

Mr. MARSHALL. I see.

Mr. KIRSCHSTEIN. The offices were set up such that the first office was the secretarial office and that was considered a nonsecure area. Then, the next set was a long office divided with cubicles. I considered that, and the staff considered that as a secure area. Then there was an office following that where the people who would do the rewriting, et cetera, sat. That was also considered a secure area. Then there was the final office in the far back of the space where the safes were kept and that was also a secure area. We originally started out with the back office as the secure area, an office where if you wanted to deal with classified information you would have to go back in there and work on it at that space. That was quickly found to be completely unworkable. It was too small, there were too many of us there, so the secure area was expanded out to the areas that I have just described.

Mr. MARSHALL. How far was it expanded out?

Mr. KIRSCHSTEIN. All the way up to the door that led to the secretaries' space.

Mr. MARSHALL. Given that explanation, where was it that you saw Mr. Schorr?

Mr. KIRSCHSTEIN. Two steps inside the door from the secretaries' office.

Mr. MARSHALL. The expanded area?

Mr. KIRSCHSTEIN. Into the expanded secure area, right.

Mr. MARSHALL. Mr. Kirschstein, did you ever receive a contact by anyone in the news media inquiring whether you were a source of the select committee's report?

Mr. KIRSCHSTEIN. I did, yes, sir.

Mr. MARSHALL. From whom did you receive that contact?

Mr. KIRSCHSTEIN. I don't recall the journalist's name at this time. I tried to recall it. A name was suggested to me. It did not ring a bell. All I know is he worked for the Washington Star.

Mr. MARSHALL. When was this contact?

Mr. KIRSCHSTEIN. It was after the committee had ended its work and I don't remember the month.

Mr. MARSHALL. Does the date April 29, 1976, refresh your recollection?

Mr. KIRSCHSTEIN. No, sir, it doesn't.

Mr. MARSHALL. Was it after the select committee had adopted its report?

Mr. KIRSCHSTEIN. Yes, sir, it was.

Mr. MARSHALL. Was it after the select committee had been disbanded?

Mr. KIRSCHSTEIN. Yes, sir, it was.

Mr. MARSHALL. Where were you when you received the call?

Mr. KIRSCHSTEIN. I was in the office of Congressman Michael Harrington.

Mr. MARSHALL. What were you doing there, sir?

Mr. KIRSCHSTEIN. Visiting a friend.

Mr. MARSHALL. Do you know how the person calling happened to contact you in those offices?

Mr. KIRSCHSTEIN. A complete fluke, as I take it. He had called there and asked for me and they had told him I wasn't there, and then he

stopped back by to try to find me again and I just happened to be there. It was quite a shock to me as well that he managed to find me there.

Mr. MARSHALL. Are you saying the people attempted to find you at Mr. Harrington's offices?

Mr. KIRSCHSTEIN. Yes. Previously he had called there asking for me because he was aware that I had once worked there.

Mr. MARSHALL. What was the substance of the conversation between you and the person calling?

Mr. KIRSCHSTEIN. He walked up to me and he said, "Are you Fred Kirschstein?"

I said, "Yes, I am."

He said, "My sources within the Central Intelligence Agency have told me that you were the source of the leak of the Pike committee report."

My response was first, "I do not believe that the CIA would have told you such a thing; and second, it is not true."

When he saw that I was quite upset, he told me that actually they had not told him that, that he had said that to see if he could elicit a response, and that was the substance of the conversation.

Mr. MARSHALL. Did you have any other contacts with the press in which you were said to be the source of the leak to Mr. Schorr or to any other person?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you know of any press publication in which it has been alleged that you were the source of the leak?

Mr. KIRSCHSTEIN. No, sir. I was told this morning that a magazine had identified me as a CIA agent on the committee.

Mr. MARSHALL. Let's see if we can clear that up. Were you a CIA agent?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Have you ever been employed by the CIA?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Mr. Kirschstein, you supplied a great deal of material. My staff advises me from a quick perusal it does not appear to be classified. Is that correct, sir, as far as you know?

Mr. KIRSCHSTEIN. That is correct.

Mr. MARSHALL. What was the reason for your retaining this material in your private possession that you have supplied?

Mr. KIRSCHSTEIN. Personal interest.

Mr. MARSHALL. Curiosity?

Mr. KIRSCHSTEIN. Yes.

Mr. MARSHALL. Mr. Kirschstein, Mr. Schorr stated in an article in the Rolling Stone on April 8, 1976, that he had possession of the select committee report or a draft thereof on January 25, 1976. Did you give the report or draft of any part of the report to Mr. Schorr or to any other person?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of circumstances surrounding the publication of the report of the Select Committee or any part thereof?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Did you give the report or make any part of the report of the Select Committee available to anyone outside the Select Committee on Intelligence?

Mr. KIRSCHSTEIN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. KIRSCHSTEIN. No, sir, I do not.

Mr. MARSHALL. Mr. Chairman, those are my questions.

Mr. FLYNT. Mr. Foley.

Mr. FOLEY. Mr. Kirschstein, at the time that the committee approved the final draft of the report on, I believe, the 23d of January 1976, was it your assumption that the report would be released to the public?

Mr. KIRSCHSTEIN. Yes, it was.

Mr. FOLEY. Did you have any inkling that there was going to be any objection to the formal release of the report?

Mr. KIRSCHSTEIN. No, sir, I did not.

Mr. FOLEY. You were not aware of any statements or position taken by any of the members of the select committee who voted against the release of the report or against the adoption of the report that they would object to its release?

Mr. KIRSCHSTEIN. No, I was not.

Mr. FOLEY. Do you know if any of the members of the staff had any impression at that time that the report might not be published?

Mr. KIRSCHSTEIN. I don't believe so. No, sir. I think it was the general assumption that things would go rather smoothly.

Mr. FOLEY. And, of course, release the report?

Mr. KIRSCHSTEIN. Yes, sir.

Mr. FOLEY. I hesitate to ask you this question but when did you, if you can tell us, first become aware of the possibility there might be some controversy about the release of the report? Do you have a recollection?

Mr. KIRSCHSTEIN. Yes. As I understood the various things that happened toward the end, the chairman because the Congress was not going to be in session would have to go to the floor and ask for unanimous consent for an extra day to file the report, and when someone objected to that I had been told by others the process that was likely to follow, that he would have to go to the Rules Committee and then it might get very sticky.

Mr. FOLEY. Do you know what date that was?

Mr. KIRSCHSTEIN. No, sir, I don't. It had to be after the 23d, after the vote. I don't remember what day.

Mr. FOLEY. Prior to the 25th of January did you have any discussions with any members of the staff regarding the possibility that the report might not be published?

Mr. KIRSCHSTEIN. No, sir, not to my recollection.

Mr. FOLEY. What was the reaction to the decision of the House not to publish the report? Were you surprised about it?

Mr. KIRSCHSTEIN. No, sir, I was not surprised but I was extremely disappointed.

Mr. FOLEY. Was there any bitterness among the committee staff about after their long labors that wasn't reaching the public?

Mr. KIRSCHSTEIN. I don't think it was bitterness. I think it was more disappointment. Some agreed. Some didn't agree, as is usually the case.

Mr. FOLEY. I think that is all, Mr. Chairman.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. I am intrigued by your encounter with Mr. Daniel Schorr. You were not too much impressed with television personalities?

Mr. KIRSCHSTEIN. Oh, yes, sir, I am.

Mr. SPENCE. In other words, you saw him so many times in there, you just didn't think anything about it.

Mr. KIRSCHSTEIN. I had seen him in nearly every hearing we had held, with the exception of the executive session.

Mr. SPENCE. Thank you.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. The thing that runs through my mind is you are a man trained in the Air Force, in security matters. You have not said anything to this committee expressing any concern about the publication of secured material. And since my experience is similar to your own, probably due to your youth, my experience is probably the same number of years yours was or similar, because mine was years ago—I am wondering what your reaction was to the fact that secret material was to be published in a report by a committee, and to be made public to the world, without some sort of caution placed, other than by that committee.

Mr. KIRSCHSTEIN. Mr. Bennett, I have listened to your questions yesterday and the day before. I think, sir, that you have the main problem in hand. I would like to give you my opinion on that.

There is a general assumption, I believe, amongst the Members of Congress, that there are people in the executive branch, a certain group who are highly trained, and who have years of experience in classifying intelligence information, and therefore the decisions to classify and declassify should be left entirely to the executive branch. It has been my experience in the 4 years I spent in Air Force intelligence, that that is perhaps not totally the case. There were young men, such as myself, with very little training, who had been in the service perhaps 6 and 7 months, who had the responsibility to classify data. Now, the classification system as it exists today is one which is extremely proliferating in volume. The reasons for that are the two reasons which you stated yesterday. No. 1, that any document which contains a part of a previous document which is classified is also classified. And in addition to that, I would like to add one more thing. If you do analysis on a document or if you draw conclusions from a document, then your document also has to maintain that classification system. Consequently, you have a great bulk of classified information.

Well, the problem is getting extremely more difficult. And for the executive branch witnesses who come before a committee of Congress, they have to deal with that, they have to defend the classification on certain documents. And the problem has become that they will argue just as strenuously for a document which is perhaps dubiously classified as they do for a document which is very sensitive. And once they have done that before a congressional committee, their credibility is somewhat decreased—if I have made my point well.

Consequently, I feel that Congress as a coequal branch of the Government should also have the right to, with expertise available to them—to declassify what has previously been classified information, in conjunction with expert testimony on the part of the executive branch and the people who classified that information.

It was my feeling about the report that we did that to a great, great extent. We provided them an opportunity to come up and argue their case for particular pieces of the classified document. Our staff would have the opportunity to express their opinion. And the Congressmen, within their wisdom, decided that the information in those reports would not damage our national security, and therefore, I believed as a staff member that that was their responsibility, and their duty.

Mr. BENNETT. The thing that still intrigues me a bit about it, though, is why anybody would think that a Congressman or a committee of Congress would have the power to do that, because that is not Congress. A Congressman is not Congress. And neither is an ad hoc committee. Neither is a standing committee.

Mr. KIRSCHSTEIN. I do agree that better procedures within the Congress for doing this must be established. I believe that deeply.

Mr. BENNETT. I must say, I cannot blame a person who was on a staff, who saw the majority of the committee apparently getting into a head-butting contest with the executive branch of the Government, and who was not in a responsible position himself or herself, except as an employee, for thinking that a Congressman or a committee of Congress had the right, as you say, coequal with the executive branch in this field. I can readily understand how a man on the staff would get that impression, and say to himself—well, maybe this decision is being made by the whole committee. But you see, the trouble was that Congress never had a real opportunity to do this.

There was nothing set up by your committee to make it possible for the average Member of Congress to know whether he was exposing, by the acceptance of this report, something to the Russians or to potential enemies. And, therefore, the Congress was confronted with either turning it down or running a risk. And why should they run the risk, if the only thing was to say the legislative branch is coequal to the executive branch? And I have already discussed my views on that yesterday.

They are not equal at all. How can you have equal oranges and apples? The Congress makes the laws. And it is Congress' fault for not having made adequate laws with regard to preserving secrecy. It is a miserable set of laws. Most of them deal with codes. That is the best kind of law you have. Then you have a few espionage laws. And believe it or not some of those espionage laws go back to 1790. As a matter of fact, they arose out of a political thing that happened in my congressional district, when France penetrated Florida against Spain. That law is still a good law. But it was drafted in 1790.

Now, this illustrates a terrible lack of oversight by Congress in this field. And I think that is the best thing that is going to come out of this hearing—whether his committee does it or some other committee does it, we are not going to leave it up to some committee chairman or some committee—it is going to be in law I hope. It may not come out of this matter. And I am not in any way critical of you or anybody else who in this context felt they were doing the proper thing. But it

is shocking to me as an ex-security type officer and enlisted man as well to think that we could have approached the possibility of giving secrets to the enemy, just because we were real uptight about a conflict between the executive and the legislative branches. And I do not think it would ever have occurred if we hadn't had Watergate just before and saw the horrendous taking of power by the executive branch against the Constitution. That is all I have to say.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. I have no questions.

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Just one question.

Where are you presently employed, Mr. Kirschstein?

Mr. KIRSCHSTEIN. I am unemployed, sir.

Mr. FOLEY. Mr. Chairman, I have one additional question.

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. Were you able to read the entire report of January 23?

Mr. KIRSCHSTEIN. No, sir, I have never read the entire report. I have read the second volume and parts of the first, but at different times. At no time did I have the total report in my hands at any one time.

Mr. FOLEY. Did you read the articles contained in the Village Voice?

Mr. KIRSCHSTEIN. Yes; I did.

Mr. FOLEY. In their entirety?

Mr. KIRSCHSTEIN. Yes; I did.

Mr. FOLEY. Is there any information in those articles that you feel would compromise the national security of the United States?

Mr. KIRSCHSTEIN. No, sir.

Mr. FOLEY. Is there any information in the report, so far as you read it, of January 23, that the House voted not to release, which you felt would have compromised the national security of the United States?

Mr. KIRSCHSTEIN. No, sir.

Mr. FLYNT. Are there further questions?

Mr. QUIE?

Mr. QUIE. One thing that runs through my mind is that you felt that the committee handled the security adequately—there wasn't any danger.

Mr. KIRSCHSTEIN. That is correct.

Mr. QUIE. And that stems from your experience with the Air Force, in comparing it.

Mr. KIRSCHSTEIN. And also my experience in the executive branch and working with the CIA and the Department of Defense. In the course of the committee work. In the course of the committee work, when I was out at the Central Intelligence Agency, watching their procedures, it is a comparison judgment, sir. And if I might add, my judgment that it was relatively good was reinforced on at least three or four different occasions when the CIA went out of their way to compliment our security procedures.

Mr. QUIE. So, then, the leaking of any information which got in the press prior to the report, or the report itself, did not stem from any sloppy procedures that might have been done, but would have to have been intentionally leaked.

Mr. KIRSCHSTEIN. It is my opinion, Mr. Quie, that any leak that occurred before the Village Voice leak was one of memory rather than document.

Mr. QUIE. Then that would corroborate what I said—you mean the memory—it was in the memory of some person, who then gave it to the reporter.

Mr. KIRSCHSTEIN. That is correct.

I would say that—where it came from, I have no idea, executive branch or wherever. But I believe it would have to be intentional, yes. Or perhaps a slip.

Journalists are quite adept at ferreting out information that someone, even knowing what the situation is, does not necessarily want to release.

Mr. QUIE. Except the report itself. That didn't help the memory.

Mr. KIRSCHSTEIN. No, sir.

Mr. QUIE. Thank you.

Mr. FLYNT. Are you familiar with the New York Times report in the issue of January 26, 1976, in which the story began on page 1 thereof, and concluded on page 14?

Mr. KIRSCHSTEIN. I don't recall at this moment, sir, no. If you could just tell me the subject of the article, sir, I may be able to recall it.

Mr. FLYNT. Mr. Crewdson's story.

Mr. KIRSCHSTEIN. I would really need to know the subject.

Mr. FLYNT. It concerned the contents of a report—it was an extensive article.

Mr. BENNETT. The first extensive exposure of the report.

Mr. KIRSCHSTEIN. I read that article a long, long time ago, sir.

Mr. FLYNT. It contained a footnote which was the subject of considerable discussion among the staff, footnote No. 119. Do you think that that information—if you remember that article—do you think that could have come from memory? Or would it have to have come from a document?

Mr. KIRSCHSTEIN. I would like to see it, sir. I don't recall.

Mr. FLYNT. It was the so-called Jackson memo.

Mr. KIRSCHSTEIN. I'm familiar with the Jackson memo, sir, yes.

Mr. FLYNT. Now, are you familiar with the story in which the Jackson memo was reported—with the article.

Mr. KIRSCHSTEIN. If you forgive me, Mr. Flynt, I have read so many articles in the paper about supposed leaks, I do not recall exactly what point he was making.

Mr. FLYNT. All right.

Let me ask you this:

Do you think that the so-called Jackson memorandum could have been republished from memory?

Mr. KIRSCHSTEIN. No, sir, I do not.

Mr. FLYNT. Are there further questions?

Mr. Kirschstein, the committee thanks you for your appearance. I believe you are appearing under subpoena. You are excused by the committee, with the committee's thanks, and you are released from

your subpena. If it should be necessary to recall you, you will be subpoenaed anew.

Mr. KIRSCHSTEIN. Yes, Mr. Chairman. May I just make one more statement?

I would like to thank the committee and particularly the two FBI agents, the ex-FBI agents, who questioned me, interrogated me. I thought they were quite thorough and very fair.

Mr. FLYNT. I repeat, that we extend you the thanks of the committee. I'm sure that includes the thanks of the staff who interviewed you.

Mr. KIRSCHSTEIN. Thank you, Mr. Flynt.

Mr. FLYNT. Thank you, Mr. Kirschstein. Is there further business to come before the committee at this point?

Without objection, the committee will stand adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 6:05 o'clock p.m., the committee adjourned to reconvene at 10 o'clock a.m., Thursday, July 22, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

THURSDAY, JULY 22, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, Hon. Thomas S. Foley presiding.

Present: Representatives Foley, Price, Teague, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, Miss Jan Loughy, staff members.

Mr. FOLEY. The Committee on Standards of Official Conduct will come to order.

The first witness for this morning's hearing is Mr. Searle Field.

Mr. FOLEY. Mr. Field, will you please stand and be sworn.

You do solemnly swear that the evidence you will give in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. FIELD. I do.

TESTIMONY OF A. SEARLE FIELD, FORMER STAFF DIRECTOR, SELECT COMMITTEE ON INTELLIGENCE

Mr. FOLEY. Counsel.

Mr. MARSHALL. Mr. Field, will you state your full name for the record.

Mr. FIELD. Yes. I use, of course, the initial A. My name is A. Searle Field.

Mr. MARSHALL. Where do you presently live?

Mr. FIELD. I live in the town of Mystic, Conn.

Mr. MARSHALL. Are you employed there?

Mr. FIELD. I am employed nearby.

Mr. MARSHALL. With whom are you employed?

Mr. FIELD. I am with a family business, Field Concrete Pipe Co., and I work as a vice president with them.

Mr. MARSHALL. Prior to that employment did you have a position with the Select Committee on Intelligence?

Mr. FIELD. I was the staff director.

Mr. MARSHALL. When did you come to the Select Committee on Intelligence as staff director?

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Mr. FIELD. The Select Committee on Intelligence that I believe your investigation is concerned with was formed sometime in July of 1975 and shortly thereafter I was hired as their staff director.

Mr. MARSHALL. If I tell you H.R. 591 was adopted by the House on July 17, 1975, would you tell me approximately when you came to work as staff director of that committee?

Mr. FIELD. There was a meeting on committee business shortly thereafter. I can't be precisely sure, sometime within a matter of days.

Mr. MARSHALL. You are appearing here at the invitation of the committee?

Mr. FIELD. That is correct.

Mr. MARSHALL. Are you appearing with counsel?

Mr. FIELD. No, sir. I am accompanied by my wife and many friends but that is about it.

Mr. MARSHALL. Prior to this hearing you received copies of House Resolution 1042 and 1054, a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigating procedures adopted by this committee and a copy of the chairman's opening statement for this particular hearing, have you not, sir?

Mr. FIELD. Yes; I guess I have. I haven't read the opening statement.

Mr. MARSHALL. In the event you would like to do that, and I anticipate a suspension fairly shortly, please read it then.

Mr. FIELD. Thank you.

Mr. MARSHALL. Do you have a written prepared statement which you wish to make to the committee at this time?

Mr. FIELD. No, sir, I think the best thing would be just to go right to questions.

Mr. MARSHALL. You have no oral statement you would like to present to the committee?

Mr. FIELD. Not at this time, no.

Mr. MARSHALL. Did you bring with you any documents in your possession concerning the subject matter of the inquiry?

Mr. FIELD. No, sir.

Mr. MARSHALL. Do you have any such documents?

Mr. FIELD. No, sir.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or evidence which may tend to defame, degrade or incriminate any person, please advise this committee in a timely fashion so the committee can take appropriate action under the rules of the House of Representatives. Is that clear?

Mr. FIELD. I would be happy to.

Mr. MARSHALL. Thank you.

Mr. FOLEY. Mr. Field, we have a quorum call on the floor of the House. The committee will have to suspend for approximately 10 or 15 minutes.

[Short recess.]

Mr. FOLEY. The committee will come to order.

Mr. MARSHALL. Mr. Field, on what date did you leave the Select Committee on Intelligence?

Mr. FIELD. I honestly don't recollect. It was sometime—I believe we went with our recommendations in February and then I stayed on the

payroll for I think 2 weeks after we wound up our last deliberations on the recommendations so that would have been sometime around either the 1st of March or the 15th of March.

Mr. MARSHALL. What was the address of your residence at the time you came to work for the Select Committee on Intelligence, that is, Washington and environs?

Mr. FIELD. 1411 33d Street, Northwest.

Mr. MARSHALL. Is that in Georgetown?

Mr. FIELD. Right.

Mr. MARSHALL. Did you live there during the time you remained with the select committee?

Mr. FIELD. Yes. The whole time.

Mr. MARSHALL. Would you physically describe the house in which you lived and the way it appeared from the outside?

Mr. FIELD. It was a townhouse and I believe it's an off-white color.

Mr. MARSHALL. Two-story?

Mr. FIELD. Three-story. It has a basement which is more or less just below street level so it appears to be three-story.

Mr. MARSHALL. What color? Off white?

Mr. FIELD. I don't know colors.

Mr. MARSHALL. Would you tell me whether it's a light color or a dark color?

Mr. FIELD. It's a light color.

Mr. MARSHALL. Can you think of any distinguishing characteristics of that house as might be apparent to one seeing it for the first time?

Mr. FIELD. Is there somebody that was surveilling it? Nothing unusual that I can point out. It has a door and windows and has a roof.

Mr. MARSHALL. Shutters?

Mr. FIELD. Yes. Upstairs. But I don't think there is anything distinguishing. It's a townhouse. It is in a row of houses and I think they all look relatively the same.

Mr. MARSHALL. Would you tell me the names of the nearest cross streets to your house?

Mr. FIELD. It's between O and P.

Mr. MARSHALL. I am sorry. I couldn't get your answer.

Mr. FIELD. It is between O and P on 33d Street in Georgetown.

Mr. MARSHALL. Were you living in that house on February 6, 1976?

Mr. FIELD. Yes, I think so. I don't know what—I don't know whether I was there all day. I am not sure what you are driving at.

Mr. MARSHALL. I just want to know if that was your residence on February 16, 1976.

Mr. FIELD. Yes.

Mr. MARSHALL. Was your family living there with you?

Mr. FIELD. Yes, sir.

Mr. MARSHALL. Did you have any domestic employees in your home?

Mr. FIELD. No.

Mr. MARSHALL. To your knowledge did a Miss Susan Parker come to your residence on February 6, 1976?

Mr. FIELD. Who?

Mr. MARSHALL. Susan Parker.

Mr. FIELD. I have never heard the name to the best of my knowledge.

Mr. MARSHALL. Have you ever delivered a draft of the select committee report to Miss Susan Parker or a person who identified herself

as an employee of Mr. Clay Felker, of the Village Voice, or one of his corporate agents?

Mr. FIELD. Absolutely not. I have never heard of Susan Parker. To the best of my knowledge I have never met anybody by that name. I guess I am beginning to get what you are driving at here now. I did not provide a copy of the report to anybody outside of the committee.

Mr. MARSHALL. On that date or any other date?

Mr. FIELD. On that date or any other time or any other place.

Mr. MARSHALL. During the course of your work as staff director for the Select Committee on Intelligence did it come to your attention there were leaks from the Select Committee on Intelligence of their work product?

Mr. FIELD. That is a very complicated question and I don't think it is possible to answer it simply yes, no, or maybe.

Mr. MARSHALL. Simplify it for me if you will.

Mr. FIELD. There were many things that the select committee looked into. Some of these things would later appear in reports. We were concerned that they may have come from our committee. We often-times examined these things. We would do research on the articles. We would try to analyze them to see if there was some way of identifying whether they specifically had come from our committee or not. We were never able to prove or even come really close to what I would call proof that something had come from the committee and/or if it had, whether it came from any specific member or staff or some employee of a member.

Mr. MARSHALL. When you say we—

Mr. FIELD. The answer to your question would be we became aware of allegations, we became aware of situations that could have involved a leak from our committee. We never were able to prove that one did.

Mr. MARSHALL. When you say we, do you refer to specific persons on either the select committee itself or the select committee staff who either were assigned responsibility or took responsibility for this?

Mr. FIELD. I would say both. There were times when we would be, the staff, myself and the people that I worked with on the staff; other times we worked with the chairman and with other members of the committee to try to determine this.

Mr. MARSHALL. Was there any designated group who were charged with this responsibility to evaluate the allegations of leaks that you referred to and to determine if the select committee or the staff was the source of these leaks?

Mr. FIELD. I would be in charge of that type of responsibility very clearly. I would work with the chairman on that. He also would be—that would be his responsibility. At times we would make use of staff personnel. Primarily Aaron Donner and Jeff Weldon worked on that type of thing. I refer to a few instances where they did analyze articles and news pieces and I believe they also had help from people on the staff.

Mr. MARSHALL. How about Mr. Boos; did he have any responsibility in this regard?

Mr. FIELD. Jack Boos was primarily our chief investigator so his primary day-to-day responsibility would be conducting the investigation. Obviously we would consult with him. We consulted with him on most things we did but I would say the responsibility for it and the initial work was primarily mine and Aaron Donner's.

Mr. MARSHALL. Is it your testimony that you were never able to establish that the committee or the staff was the source of any leaks outside the committee?

Mr. FIELD. Any leaks of classified information, that would be correct.

Mr. MARSHALL. What about leaks of other types of information which was not classified?

Mr. FIELD. Again, you are in a complicated area. If you take a news story, there are all sorts of sources quoted from time to time. On occasion, and I must admit it was not frequent, there would be a reference to a committee source. As I recall, every time there were other sources as well, intelligence sources, that type of thing, a Government source. It was difficult for us in those instances, and I again recall one we spent a lot of time on, to determine whether the committee source which was being quoted on something of an opinion-type thing in a nonclassified area, that the CIA was sloppy, according to a committee source; which would be different from saying that the CIA conducted a certain operation or did a certain type of activity which would be referring to something classified or something of a secret nature.

Mr. MARSHALL. My question is, were you able to—excuse me—identify any person on the committee or on the committee staff who gave information or disclosed information, classified or not, to persons outside the select committee or staff?

Mr. FIELD. Just to finish my answer, we never identified, to my satisfaction, there was any secret information that came out through an identified committee source.

The second point, we never identified a specific person at any time. In other words, we never actually got down to a named person.

Mr. MARSHALL. As staff director did you take any means to prevent—

Mr. FIELD. May I add one point to that?

Mr. MARSHALL. Sure.

Mr. FIELD. I am sure your experience is worth considering, here, at this time. It is not easy to identify the source of a story. You have been through this at considerable expense and energy with some very talented people.

We recognized that. We did what we could, short of putting somebody on the rack. If the newsmen won't tell you and the source doesn't volunteer, there are very few avenues available to you.

Mr. MARSHALL. Did you ever go to a newsman and ask him the source of his information?

Mr. FIELD. No, because frankly that would have been a very difficult avenue to take from two points of view, as far as I am concerned. First, I was not in that business, vis-a-vis the news media. I didn't want to get into that. That was not within the scope of our resolution. Second of all, I did not want to be in a position of contacting newsmen excessively or unnecessarily. Third, I suppose I would mention, on two separate occasions the issue of leaks came before the committee and there were specific resolutions placed before the committee as to whether or not they would authorize the staff to conduct investigations of the leaks.

On both occasions the committee decided not to have the staff look into leaks.

Mr. MARSHALL. Was this by formal vote?

Mr. FIELD. By formal vote.

Mr. MARSHALL. Do you recall when this was?

Mr. FIELD. I recall the most important one which would have been the Monday or Tuesday, probably the Tuesday—my dates aren't all that terrific—the Tuesday after the weekend of the 25th. I remember Congressman Kasten introduced a resolution.

Mr. MARSHALL. That would have been the 27th?

Mr. FIELD. I believe there were two votes for it, maybe three. Kasten, Milford and I believe Aspin voted for it. The rest of the committee voted against it. So by that overwhelming vote we were instructed not to look into these things. We did work for the committee and we followed the dictates of the committee and I was not in a position of being able to pursue just beyond conversations in talking with the Members and working on the evidence that we had by analyzing articles and that type of thing.

Mr. MARSHALL. Let me ask the staff if they will give you a copy of the New York Times article of Mr. John F. Crewdson, which appeared in the New York Times on January 26, 1976.

Let the record show that a copy of that has been given to you.

Mr. FIELD. I have a Nicholas M. Horlock.

Mr. MARSHALL. That is page 1. Look at page 2. Do you see the Crewdson article?

Mr. FIELD. Yes.

Mr. MARSHALL. Go down to the second paragraph underneath Mr. Crewdson's byline.

The 338-page report which has not been released, but a copy of this was obtained by the New York Times discloses a number of irregularities uncovered by committee investigators.

Did that article come to your attention following its publication in the New York Times on January 26, 1976?

Mr. FIELD. Definitely.

Mr. MARSHALL. All right, sir. Was any investigation initiated by you or anyone on the committee or the staff as to the source of Mr. Crewdson's information—excuse me, let me finish the question, then you may respond—any investigation initiated by you or any member of the staff concerning that part of the article which says, "A copy of the 338-page report was obtained by the New York Times"?

Mr. FIELD. I think you will find that this sequence of events—I believe this was the Monday that I am referring to that led to the Kasten resolution, and I proceeded according to the instructions of the committee, and the committee instructed me not to conduct this type of investigation, so that would be my primary response.

However, not to avoid it because there is specific committee action here, I, as staff director, did take an interest in the copies of the report. I read numerous articles pointing how our reports were supposed to be uncontrolled and so forth. That is not true. We knew how many copies of the report we had, we knew where they were going, where they went, we kept track of that, we checked constantly on that, we kept records of that. We corroborated those records from time to time at frequent intervals, usually every day. At any point I would ask—and I did ask a number of times during the week—I met with the chairman and went over with him—as to where the different copies were.

As to the issue of numbers and identification on a report, I would

only say that most of the documents that we received from the CIA and the FBI did not have numbers on them. It is not necessarily common practice in the area of classified documents. I think the general public may be led to believe that it is, but it is not, mainly because it doesn't make a lot of difference. If there is a number on a report if somebody hands it to somebody to be Xeroxed——

Mr. MARSHALL. I don't mean to interrupt you, but I intend to ask you in some detail on the subject.

Mr. FIELD. But, you asked me if I had done things. I am not trying to say for the record, yes, we did a number of things.

Mr. MARSHALL. I am asking you about the January 26 article. Was anything done about it with regard to what Mr. Crewdson's source was and the statement that he had obtained and/or the New York Times had obtained a copy of the report?

Mr. FIELD. We proceeded as we had been all along with this same procedure to identify where the copies of the report were, who had them, what kind of procedures they had conducted vis-a-vis their own reports. During the week after the committee had told us not to conduct a formal investigation of this, we did analyze these articles to see if we could somehow tell, if nothing else, which version of the report appeared to have been either given to the New York Times or that they had access to. It is a little unclear as to whether they actually had a copy or merely had access to one and were pretending they had a copy.

In any event, we did analyze these articles to see if there were distinguishing features in those stories.

Mr. MARSHALL. What was your conclusion?

Mr. FIELD. It was mixed. There were definitely things in the articles which would have come from one of the reports that had been circulated to our members.

Mr. MARSHALL. Let me interrupt you here. When you say one of the reports would have been circulated to one of our members, are you referring to the initial circulation of the complete report as the January 19, 1976, draft?

Mr. FIELD. Again we are now getting into a whole sequence of circulation and versions which I know you have been through many times. Let me revise that statement.

Mr. MARSHALL. Excuse me. I am trying to identify for the record what you mean by various drafts being circulated. Are you referring to the January 19 draft?

Mr. FIELD. Let me begin over again with what I was trying to get at here because I will clear that up.

The information which these articles have, which were probably the most detailed articles about the report, although most of the attention has been given to Daniel Schorr, that information was in reports that were circulated. There were other articles that had information that we did not possess.

Mr. MARSHALL. Which were those articles?

Mr. FIELD. One in particular dealt with, as I recall, subjects of pornographic movies the CIA had made. We didn't know who the subjects were and the names and so forth were coming out in these articles which was very strange to us.

Mr. MARSHALL. Can you identify the article as to publication or date?

Mr. FIELD. I can't. If you had a set of the articles I could easily identify it. It may even be somewhere in here (indicating). I would be happy to try to identify one afterward if you would like.

There were stories on it which looked as though they may have come out of Italy. We knew there was a copy of our report in Italy with the ambassador. We found that out because he telegraphed us with his comments, at which point I asked the CIA if they had telegraphed this around the world, and they said they had to any and all embassies—to any embassies which might be affected by our report, which I was led to believe was a fair number of embassies. The Italian stories contained—

Mr. MARSHALL. My question is—

Mr. FIELD. So I have very mixed reactions on this.

Mr. MARSHALL. You testified at length but you never really identified what you mean by drafts being circulated. Again I ask you, are you referring to the first complete draft being circulated, the January 19, 1976 draft?

Mr. FIELD. What are you now referring to as far as my reference to drafts being circulated?

Mr. MARSHALL. Your testimony was various drafts had been circulated. My question—

Mr. FIELD. Do you want to start at the beginning?

Mr. MARSHALL. I want you to answer my question. My question is, what do you mean by saying various drafts had been circulated? Were they identified by date, was there some other source of identification on them so we can know what we are talking about when we say drafts are being circulated?

Mr. FIELD. The drafts that had been circulated—I am not being evasive; I am not quite clear exactly what you want. Let me try this. The drafts that had been circulated beginning on the previous Monday, each day there had been different changes made and inserted in the drafts. We referred to those as different drafts; actually they were merely the same draft updated.

Mr. MARSHALL. You say the previous Monday. Is that January 19?

Mr. FIELD. Yes.

Mr. MARSHALL. Is that the first time a draft was circulated to the members of the committee? May I have an answer? Was that the first time—

Mr. FIELD. Yes.

Mr. MARSHALL. Yes?

Mr. FIELD. Yes, it was the first time that even the Chairman had seen the report.

Mr. MARSHALL. All right.

Mr. FIELD. The drafts were identifiable because we had a record of the committee proceedings where changes had been made so we could tell precisely when a change had been made and if, for example, a piece of information appeared in this story, and from our general recollection we would say now that says something we either added or deleted later on, we could find out, yes, in fact it had been Wednesday morning that information had been deleted or added.

If it had been deleted Wednesday, then it would be a pre-Wednesday version that would be in here.

Mr. MARSHALL. Did you go through that process with Mr. Crewdson's story?

Mr. FIELD. Yes.

Mr. MARSHALL. What was your conclusion there as to the identification of drafts as the source of Mr. Crewdson's story?

Mr. FIELD. We were not able to identify a specific draft.

Mr. MARSHALL. Were you able to determine from reading the article and from your knowledge of the state of drafts on a particular date whether the statement, that a copy of which was obtained by the New York Times, was in fact a correct statement?

Mr. FIELD. I was never able to determine that, no.

Mr. MARSHALL. Do you have any personal opinion about that?

Mr. FIELD. I don't know of any conceivable way I actually could obtain—unless you were to call John Crewdson and ask him.

Mr. MARSHALL. My question is, from your analysis of the drafts, do you have any judgment as to whether this statement is a correct statement or not?

Mr. FIELD. I do not know whether he had a copy, no.

Mr. MARSHALL. Was it called to your attention that Mr. Daniel Schorr on a television show on January 28, 1976, exhibited to the camera a document which he purported to say was a copy of a draft of the select committee's report?

Mr. FIELD. I am not sure of the exact days. I remember coming in one morning and somebody said the night before Daniel Schorr had held up on TV a copy of what appeared to be one of our drafts.

Mr. MARSHALL. Did you make an investigation?

Mr. FIELD. That was after the Kasten resolution had been defeated by the committee.

Mr. MARSHALL. My question is, did you make an investigation?

Mr. FIELD. I could not make an investigation.

Mr. MARSHALL. Your answer is no, you did not make an investigation?

Mr. FIELD. Yes.

Mr. MARSHALL. If you wish to explain why you could not I think I understand your position. Did anyone make an investigation?

Mr. FIELD. As to whether Daniel Schorr had a copy?

Mr. MARSHALL. As to whether what he exhibited on TV was in fact a draft of the select committee report.

Mr. FIELD. No formal investigation. There were various people who said it didn't look like the binder we used. Whether or not I don't know.

Mr. MARSHALL. Were you disturbed about this, either the Crewdson article or Mr. Schorr's appearance on TV?

Mr. FIELD. I was extremely disturbed beginning with the previous week. If you go back to the proceedings of our committee during that period of time you will see that I talked with the committee about it, I expressed my concern, I expressed by displeasure with it, I spoke to the staff about it at times. Yes; I was very concerned. This was the one thing that could destroy our committee and discredit it.

Mr. MARSHALL. Are you saying your concern fell on deaf ears insofar as the members of the select committee?

Mr. FIELD. That implies that was coming from the committee. In other words, yes; if the leak was from the committee it was falling on deaf ears. If the leak was not from the committee, then they may not have been in position to heed my concern and to do something.

Mr. MARSHALL. But your testimony is the committee took no steps?

Mr. FIELD. I had the feeling they were equally concerned.

Mr. MARSHALL. You were not concerned to take steps to investigate the source if it was within the committee?

Mr. FIELD. You have to go back to the transcript of that vote and the debate.

Mr. MARSHALL. May I have an answer to my question?

Mr. FIELD. I am answering your question. I don't think you can place their refusal to vote in the area of lack of concern. That sounds a little cavalier about it. They had serious problems vis-a-vis time. They were running out of time. They had 4 or 5 days left in the life of the committee. There was no indication they would go to the floor for an extension. The resolution that we had setting us up to investigate the intelligence agencies of the United States did not authorize us to conduct that kind of investigation. So we had serious legal problems with it, particularly if you try to subpoena somebody. You have a specific resolution. We did not.

Mr. MARSHALL. The House resolution setting up your committee provides in sections 2 and 6 that certain security procedures were to be adopted.

Mr. FIELD. Were to be adopted but it did not say we had the power or authority to investigate leaks from the executive branch, which this easily could have been, or leaks from the Congress.

Mr. MARSHALL. As staff director was it your view simply that the security rules and regulations were going to be adopted and if they were carried out, fine, and if not, you were helpless? Surely that wasn't your view, was it, Mr. Field?

Mr. FIELD. You are changing the issue slightly.

Mr. MARSHALL. I am asking a question which is about your view as to whether there should be some inquiry that the rules and regulations were not adopted.

Mr. FIELD. The answer is "No." I did expect that we would and could and did do things where we suspected there may have been a problem of the staff. I was quite confident as a result of my work in the staff, the informal, if you want to call it, investigations that I had done, inquiries, examination of reports and so forth, that these things had not been coming from the staff.

Mr. MARSHALL. Let's talk about that. What is the basis for that conclusion on your part that they were not coming from the staff?

Mr. FIELD. Well, there are many, many events that would lead you to that.

Mr. MARSHALL. Give me one basis.

Mr. FIELD. One of the first ones would be this. That staff worked on the final report for 5 to 6 weeks, worked intensely on it. Most of the staff was involved. There wasn't even a speculation piece in the newspaper, even the type of things you heard about the Senate Intelligence Committee—that it has been learned the Senate Intelligence Committee will reopen an investigation of the assassination of John Kennedy. There was not a hint of what our report was going to con-

tain. The staff involved in that report put together the final version of the draft on Sunday evening, January 18 it must have been.

Prior to that time there was no single draft of the report. It had been in pieces and so forth and had not been rewritten or retyped. So you didn't have something that somebody could have taken away prior to that time and somehow arranged to get to the press. That was circulated to the members on Monday, January 19. It was also circulated to the executive branch. The news media were inquiring about this report before most of the people that worked on the thing even left the office. Most of the key people on that report had been with me constantly from the time it was circulated until the news article or news reports were coming in.

Second: At the same staff level there were no available reports to the staff. We had six copies in the staff. Those were under lock and key which I personally supervised. I remember one staff member—I believe he is here this morning—Ross Starek wanted to read the report. I was even leery about anybody reading it for half an hour. I didn't want those things out of control. I finally agreed to let him read it right there where I believe Jack Boos was negotiating this. Jack would watch him and it would be a limited period of time so I could be sure it didn't go anywhere. That is how concerned we were.

We kept control on those and they were in the news. That is one of many instances I can go through which indicates you are not talking of staff people.

Mr. MARSHALL. Are we talking about committee members?

Mr. FIELD. I am not going to speculate beyond the staff. I am responsible for the staff.

Mr. MARSHALL. Are you saying there was no reference made until distribution was made to the executive branch as well as committee members?

Mr. FIELD. And to the executive branch which Xeroxed many, many copies and had no better control on it than we did. They didn't put any numbers on it, which I think is significant.

Mr. MARSHALL. Did you meet with Chairman Pike on January 17, 1976, to discuss a plan for distribution of the January 19 draft when those had been compiled and completed?

Mr. FIELD. If that is the Friday before, yes; I recall our meeting.

Mr. MARSHALL. What were your recommendations about distribution at that meeting?

Mr. FIELD. I recommended the report not be distributed, that it be kept in the secure area of the committee. To the best of my knowledge nothing that had ever been kept in the secure area of the committee had ever appeared anywhere in print and this would, I felt, assure that the report would be kept by the committee confidential until or unless they chose to make it public.

Mr. MARSHALL. Was it your view then committee members would have to come to the select committee space in order—

Mr. FIELD. To a library area we had set up.

Mr. MARSHALL. Were those recommendations followed?

Mr. FIELD. No; they were not.

Mr. MARSHALL. Was any reason given as to why they were not followed?

Mr. FIELD. We had a discussion and I was not the only one there. I think Jack Boos was there and Aaron Donner and the chairman. We discussed the pros and cons. One of the consequences in that kind of plan was the fact it would be much more difficult for members to read the report and thereby participate intelligently in the discussions of the next week. As I recall, I think that was the main objection to it. I think there was also a feeling on Mr. Pike's part that this was a report of a House committee, this was going to become public. It was written to be public, that we were not going to go around stamping it top secret. That view was also expressed. In any event, the upshot of it was I was given instructions as to how it should be circulated.

Mr. MARSHALL. Would you tell us what those instructions were?

Mr. FIELD. It was to have a covering letter on it, that we were not to use top secret stamps—we didn't have any. Had I stamped it top secret I would have broken the law because since I am not an executive branch employee I am not empowered by law to classify things. But it was not to be stamped even sensitive material, which is a term we often used instead of the top secret term.

It was not to be identified, in other words each copy marked with numbers, that kind of thing.

Mr. MARSHALL. Did the January 19 draft or January 23 draft contain top secret information?

Mr. FIELD. There was—that report was in no way classified.

Mr. MARSHALL. I understand that. I am asking if it contained top secret information.

Mr. FIELD. Yes. I say that in a general term. I couldn't identify for you specifically which line, which phrase. I presume it did. There was top secret, secret, and confidential. It may not have contained anything top secret but it could have.

Mr. MARSHALL. If it didn't have a classification of top secret did it have information which in your judgment had been taken from documents that had been classified top secret?

Mr. FIELD. I would feel confident in saying there was classified information in it. Whether there was anything top secret I can't say. Restricted code word and so forth, no. I would have to go back to the report and analyze it.

Mr. MARSHALL. You touched on this area in your testimony. I would like to give you an opportunity to complete this. Were the drafts numbered beginning with the distribution of the January 19 draft, also the distribution of any changes to the January 19 draft as well as the draft of January 23? Were any of those numbered?

Mr. FIELD. No. Per the instructions of the committee through the chairman.

Mr. MARSHALL. Was there any other system that you had for keeping account of persons who received the drafts as well as reception of changes in the drafts?

Mr. FIELD. Yes.

Mr. MARSHALL. Would you tell us what that system was?

Mr. FIELD. We kept a record which I reviewed from time to time of who had received which copy or who had received copies, if they received a second one because they had come to a hearing without their first one. If the executive branch had received one, if they had received a second one and then how many we had at the staff level, which I—

you were asking earlier why did I not suspect the staff. We kept things under lock and key. After the first few days there had been cases where members had come to a hearing and had forgotten their report and we had given them one of our six spare copies. After a few days we were down to two copies so there just weren't a lot of available copies at the staff level.

There were a lot more elsewhere all over the place.

Mr. MARSHALL. Were these copies that you loaned at a moment's notice perhaps ever retrieved or otherwise accounted for?

Mr. FIELD. I believe some of them were; yes.

Mr. MARSHALL. Were all of them?

Mr. FIELD. I am going back in recollection now because my recollection is some were not.

Mr. MARSHALL. Were you personally in charge of this distribution system you described or did you have a person on your staff who had more immediate operational responsibility for it?

Mr. FIELD. That is precisely correct. I took full responsibility for it. There was somebody obviously who did this.

Mr. MARSHALL. Who did?

Mr. FIELD. Emily Sheketoff would have been the primary person. She will no doubt appreciate my mentioning it.

Mr. MARSHALL. We will give Miss Sheketoff ample opportunity to explain her view of things as well.

Mr. FIELD. I am sure.

Mr. MARSHALL. Was there anyone else who had operational responsibility for this system of distribution besides Miss Sheketoff?

Mr. FIELD. Not operational responsibility, no. If she were not in or were out of a room I might turn to somebody to help on some element of it or if we gave a copy of a report to somebody I might ask somebody to come down and make sure that was given to Emily later and she inserted it in her record.

Mr. MARSHALL. Had you instructed Miss Sheketoff that the drafts contained classified information and given her sufficient facts to enable her to form an opinion to whether there was some care needed in the distribution and accounting of the drafts or any changes?

Mr. FIELD. We get back to the classified situation. We did not use the term "classified" because the draft was not classified.

Mr. MARSHALL. I understand that, but I am trying to distinguish between something on the draft, what you referred to earlier as classified information—

Mr. FIELD. Emily was very aware of the report. So was everyone on the staff. They knew exactly what was in it. The letter circulated pointed out it would be a violation of our committee rules if it were revealed to any unauthorized person. Emily knew that, the staff knew it. Those who were distributing, I talked to personally, pointed out the necessity for making sure this went to the members, that it contained what we called executive session material.

Mr. MARSHALL. Following distribution of the January 19, 1976, draft, were you present at a meeting on the evening of January 22, going in on the morning of January 23, 1976, at which Mr. Packman of the State Department, various representatives of the CIA were there to comment and discuss proposed changes in the January 19 draft?

Mr. FIELD. Yes.

Mr. MARSHALL. Was a copy of the draft of January 19 or any changes that were agreed to at that meeting taken by representatives of the CIA from that meeting?

Mr. FIELD. You would have to go back to the records on that. My recollection is yes.

Mr. MARSHALL. How many?

Mr. FIELD. I did not deal directly with them. As a matter of fact, I had been a peripheral participant in that meeting so I really think you ought to go back to the records on that.

Mr. MARSHALL. Whose responsibility was it—

Mr. FIELD. I remember asking afterward if they had taken one with them and I was told yes.

Mr. MARSHALL. Who did you get that answer from?

Mr. FIELD. I don't recall.

Mr. MARSHALL. But it is your belief that the CIA took copies from that meeting?

Mr. FIELD. Yes. And I asked many, many times after these articles began appearing because these were later versions because it would be very important if the CIA had taken a copy at a point or obtained one later. I didn't realize one had been given to them on that Saturday and it was very important to us to know whether they had somehow obtained a later report. The only avenue I knew was that evening when they had been in and I believe that they would have taken one. I asked, I was assured that they had taken one.

Mr. MARSHALL. You have no recollection of who told you these things?

Mr. FIELD. No. I probably asked 5 or 10 people. Two or three probably said yes. I know I asked Aaron Donner, I asked Jack Boos, I would assume I asked Emily Sheketoff. I probably asked some of the other people who were involved that night. I know I received affirmative answers on that.

Mr. MARSHALL. Did the CIA request a copy of the select committee report on January 24, 1976?

Mr. FIELD. Which day is that? Is that Friday?

Mr. MARSHALL. That is Saturday.

Mr. FIELD. Saturday. No. Friday night I got a telephone call from Mr. Rogovin.

Mr. MARSHALL. This is January 23 you are referring to?

Mr. FIELD. Yes.

Mr. MARSHALL. Tell us about that telephone call.

Mr. FIELD. Mr. Rogovin wanted a copy of our final report.

Mr. MARSHALL. What did you say to him?

Mr. FIELD. I said absolutely not.

Mr. MARSHALL. Was this a decision you made or was it a decision that you were passing on under instruction?

Mr. FIELD. As I recall the sequence I believe I made this decision at that point because I did not have authority to give him one. Then I called Aaron Donner, either that night or the next morning, who talked to the chairman, who got back to me and concurred in the decision and said, yes, that is the right decision.

We were concerned at that point that if we handed out our final version there would be some attempt to run book reviews of it out

of the White House or the CIA. In fact, on Monday Mr. Colby was up giving a news conference, characterizing our report, and it was the kind of thing we hoped to avoid by saying it is our final version, you will wait along with everybody else until it becomes public.

Mr. MARSHALL. Were there any changes made after the meeting on January 22, 23, and whatever changes were agreed to there and the report adopted by the select committee on January 23?

Mr. FIELD. Yes. If I were to characterize them I would say there were not many. There were perhaps half a dozen. That would be my recollection. Generally speaking, it was the type of thing where the committee would vote to delete a footnote or would vote to delete a word. They were reasonably easily identifiable. I mention this only because that Thursday copy becomes reasonably significant because it wouldn't have been hard for somebody to go from a Thursday copy—

Mr. MARSHALL. That is January 22?

Mr. FIELD. Right—where there were a lot of changes made. But once you had that version, if you did, to get to the Friday version would not have been hard. You could probably have talked to somebody who had been in the committee proceedings that day and gotten a pretty good rundown. You could do it by memory almost.

Mr. MARSHALL. Was Mr. Rogovin at this meeting on the evening of January 22-23?

Mr. FIELD. I am not sure. I seem to recollect him coming in at some point but even though I am under oath I wouldn't want to swear to that.

One other important point about that I read in one of the newspaper articles—or maybe it was Mr. Bowers' opening statements—the CIA apparently said they didn't take that copy with them. I find that rather incredible because the version they would have come in—

Mr. MARSHALL. The 19th version?

Mr. FIELD. Yes; to conduct this negotiation, and where we ended up later that night, the original versions would have been, to be honest about it, worthless to them. I remember them discarding their version early on in the negotiations and using one of our remaining copies to negotiate from and make changes because they were talking from such a completely different version when they started out it was just hopeless.

Mr. MARSHALL. If the CIA took the copy of whatever was agreed to on the evening of January 22-23, when you talked to Mr. Rogovin on the evening of the 23d did he give any reason as to why he was requesting a copy of something the CIA already had?

Mr. FIELD. It was for official purposes. In other words, the general tenor of the conversation—he was quite annoyed that we were being uncooperative in not giving them an official final version so they can be sure—I pointed out there had been very few changes and I couldn't imagine what purposes they needed a copy of that report on that Friday night for, but for whatever purpose it would be they had something that was close enough. Then there was this sort of thing: We want a final complete corrected clean version.

My problem with that was the CIA had no more need for that. The reason we had given them a copy of the report in the first place was so they could make comments on things they claimed were sensitive

and we said maybe they were not sensitive. Once the committee had voted 9 to 4 to make that a public report, that process was ended. There was not going to be any further negotiation and there were not further negotiations.

Mr. MARSHALL. Let me interrupt. When you say a vote of 9 to 4 you are referring to January 23?

Mr. FIELD. That is right. After that, when Mr. Rogovin called up, my response to him was there is no purpose in having copies floating out in the executive branch. We are concerned about it coming out of the executive branch. We did not want it coming out earlier via the White House or any other place. I spoke to him about it that night, had quite a discussion with him about that.

Mr. MARSHALL. Have you read the version published in the Village Voice on February 16 and February 23, 1976?

Mr. FIELD. I must admit I haven't read the whole thing for two reasons. First of all, I read it and I have read it enough and you can only read these things so many times.

Mr. MARSHALL. You say you wrote a lot of it. You are referring not to authorship in the Village Voice but your prior authorship?

Mr. FIELD. The words written there were often written by me.

Mr. MARSHALL. The question is when. I take it that was earlier work you had done. You are not a writer for the Village Voice.

Mr. FIELD. Yes. The second reason, I was very discouraged. I didn't buy a copy of the Village Voice, I never have, and I never will. I was pretty discouraged.

Mr. MARSHALL. Based upon the part of the article or articles that you read, were you able to form any judgment as to which draft or which draft as amended or changed the Village Voice had obtained?

Mr. FIELD. The staff worked at one point in analyzing the Village Voice article and my recollection of the results of that was that it appeared—well, it was a strange draft, to be honest. I think you have found the same thing. It had some of the Friday changes in it.

Mr. MARSHALL. Excuse me. Friday? Are you talking about January 23?

Mr. FIELD. Yes. This would be the last day we made revisions. It had some of those changes in it which would indicate it was a very late version of our committee's report. But it didn't have all of the changes in it for Friday. There were some missing pages which may not be significant. It was probably passed around to the point where pages could be missing. I understand from your report there were two pages in your report that were not in the Village Voice. But the most important thing from our point of view was the changes were contained in the Village Voice.

Mr. MARSHALL. My question is, Did you form a judgment as to which draft appeared there?

Mr. FIELD. It looked like the late Thursday draft with somebody adding in half of the Friday changes. that kind of thing. It didn't strike me as anything we would have had at the committee level because—this goes back to the question way back. why did I have confidence in the staff? At the committee staff level I feel quite confident we kept accurate copies. I know we did because it was our report that went to press eventually. We had the ultimate responsibility and we only had one or two copies. We kept them both up in case we needed

two copies for the printer. We had a copy and a backup copy. Those were accurate. So when this appeared and it was inaccurate I don't know of any way a staff-typed copy could have been that way.

Mr. MARSHALL. The staff failed to make all of the changes in particular copies. You have had such a conversation with Congressman Treen, have you not?

Mr. FIELD. You would have to recite that conversation to me. I am not sure what you are driving at. No, the staff copies were accurate. Now, whether the members' copies were accurate, I believe that is what you are referring to. That is a different story. That depended on whether the member got his copy to us in time to get that day's changes in it or whether we had to go to his office to do it, that type of thing. Our staff copies were accurate.

Mr. MARSHALL. Didn't you tell Congressman Treen there were some instances where the staff had failed to get changes to select committee members?

Mr. FIELD. That is to the members.

Mr. MARSHALL. Yes, sir. The staff had failed to get some of the changes to the members.

Mr. FIELD. I was talking about the staff copies.

Mr. MARSHALL. I understand that. May I have an answer to my question? There were instances where the staff had failed to get changes to the select committee members?

Mr. FIELD. And/or the member had failed to get his changes. We worked for the member. If he chose to take his report home for the weekend, which I know Mr. Treen either took his report or left it with us for a period of time, and I believe in that context I pointed out to him he didn't have all the changes.

Mr. MARSHALL. My question is for whatever reason, without trying to assign fault one way or the other, there were drafts in the possession of members which did not have all of the committee changes; is that not correct?

Mr. FIELD. Yes; but let me elaborate on that.

Mr. MARSHALL. All right.

Mr. FIELD. The changes that would not have been in there would have been of a block nature. In other words, either you got the Tuesday changes, let's say, or you didn't, or you got the Wednesday changes or you didn't. But this was a case in the Village Voice type situation where you had half of the Friday changes.

Mr. MARSHALL. Didn't Mr. Treen challenge you about the changes on Monday, January 26, and the fact that they had not been made in some of the members' drafts?

Mr. FIELD. Monday, the 26th?

Mr. MARSHALL. Yes. There were four specific changes which had not been made in members' drafts.

Mr. FIELD. Yes. And I am not sure that doesn't get into executive session type discussion.

Mr. MARSHALL. I am not asking for the substance.

Mr. FIELD. There was something unusual about those changes, which I don't want to get into right now. And that was a little different. That was not a routine change. There had been a situation here where the staff had been told to do certain things—it is hard to explain—and we were waiting upon word from others before we did them.

Mr. MARSHALL. Let me interrupt there. We can go into executive session.

Mr. FIELD. It was not an accidental missing of things which the Friday Village Voice thing would have been. In other words, the Friday Village Voice thing was not something which would be an explanation for them being missing. Those four, there was a different controversy.

Mr. MARSHALL. Did you at any time take a draft of the select committee's report, beginning with the draft of January 19, 1976, any changes up until then, after the report was adopted on January 23, home with you?

Mr. FIELD. No.

Mr. MARSHALL. Did you at any time take any draft of the select committee's report?

Mr. FIELD. No.

Mr. MARSHALL. Let me finish—outside the committee's space?

Mr. FIELD. I assume you would not count going to hearings.

Mr. MARSHALL. No, sir, I mean other than going to hearings.

Mr. FIELD. To the best of my knowledge, no; unless I went up and visited one of the members and took them with me—up to see Chairman Pike, for example. Short of that kind of business, no; I did not.

Mr. MARSHALL. Was any draft ever delivered to you at your home?

Mr. FIELD. Yes.

Mr. MARSHALL. All right. When was that?

Mr. FIELD. I'm not exactly sure. It was either on Saturday or Sunday.

Mr. MARSHALL. The 24th or 25th of January 1976?

Mr. FIELD. The 24th or 25th.

Mr. MARSHALL. Who delivered it?

Mr. FIELD. Bob Brauer.

Mr. MARSHALL. And what were the circumstances of that delivery, insofar as they were known to you?

Mr. FIELD. As I recall, he called, he had been working on Congressman Dellum's individual views, and he had finished working with the report, and wanted to return it to the committee. As I recall, the committee—there was nobody there.

Mr. MARSHALL. This is what Mr. Brauer told you?

Mr. FIELD. Yes; my recollection is that he told me he had finished with it, and wanted to get it back to the committee, that I told him I didn't believe anybody was at the committee, that I was on my way down, that I would wait, if he would bring it by the house, that I would take it down to the committee and lock it up, which I did.

Mr. MARSHALL. This is a telephone conversation you had with Mr. Brauer before he delivered the copy to you at your home?

Mr. FIELD. That is correct.

Mr. MARSHALL. Did he give you any explanation as to the urgency of calling you on a Saturday or Sunday, whichever it was, about delivering the draft to you?

Mr. FIELD. I didn't get any feeling of urgency. I think it was perfectly normal. He wanted to get it back to the committee. And that was my recollection of that telephone call.

Mr. MARSHALL. What did you do with the draft after you received it from Mr. Brauer?

Mr. FIELD. I took it to the committee and locked it up.

Mr. MARSHALL. Did you ask Mr. Brauer if he had made any copies, or if there were other copies outstanding of the draft?

Mr. FIELD. No, I did not.

Mr. MARSHALL. Did he volunteer that information?

Mr. FIELD. No, he did not.

Mr. MARSHALL. Now, were there any other instances, to your knowledge, where drafts of the Select Committee's report were outside the Select Committee's spaces other than those which had been distributed to members, and to the CIA, or the executive branch, as you testified?

Mr. FIELD. What do you mean other instances? He was a member—he was a staff—I know of other staff people who saw it. That was not an unusual circumstance.

Mr. MARSHALL. When you say who saw it, you mean who saw it outside the Select Committee spaces?

Mr. FIELD. Yes. They wouldn't have seen it in our space, no way.

Mr. MARSHALL. Who were they?

Mr. FIELD. I remember discussing it with Paul Ahern, who works for Congressman McClory, and he had detailed knowledge of the report, had obviously read it. I remember one of our staff people telling me that Congressman Aspin's press secretary had been reading it. Those are two instances. I vaguely recall others, but not well enough that I would want to—

Mr. MARSHALL. Now, turning your attention to—

Mr. FIELD. By the way, I also have spoken with people who have friends in the White House, who have absolutely nothing to do with intelligence, classified information, personnel, and so forth, who read our report.

Mr. MARSHALL. Who were they?

Mr. FIELD. I will tell you in executive session.

Mr. MARSHALL. All right.

Turning to the Select Committee's procedures for safeguarding sensitive or classified information, were there any instructions or procedures or even customs adopted with regard to trash—that is clippings or copies of documents, which would be either classified or sensitive, and how that trash was to be disposed of at the end of the working day, or some other periodic time?

Mr. FIELD. Yes, we had numerous discussions of it, talked with the CIA about it, talked with the House of Representatives about it, many things.

Mr. MARSHALL. What were those procedures that you adopted with regard to trash?

I am not interested about your lunch trash. I am talking about classified documents trash.

Mr. FIELD. The main procedures in the first instance were we just collected it, as I recall. We then obviously began to accumulate a large amount of trash. We tried to determine what prior committees had done, including committees such as the Impeachment Committee, the Senate Watergate Committee. We found that they had had very severe problems locating an incinerator, which would be the best way to get rid of it. We tried to find an incinerator. Eventually we did locate an incinerator. I approved and spoke with the chairman about a procedure by which one of our staff members would take this to an

incinerator. We had a problem with that later on. I know we got into extensive discussions with the CIA, trying to get them to pick up our trash, and take it away for us. And I honestly do not recall. The upshot of that I believe we worked out an arrangement with them. But you would really have to get into that with other people.

Mr. MARSHALL. There is evidence before this committee that trash which may have contained classified documents was simply stuck out in the hall. Do you have any knowledge of that?

Mr. FIELD. I have no knowledge of that. I would find that very unusual, and I doubt it.

Mr. MARSHALL. Was there anyone on the committee staff who had the responsibility for monitoring trash in the committee's spaces to determine whether it should go into a sensitive type procedure for destruction, or whether it could be put into a common waste receptacle for destruction?

Mr. FIELD. I would say anybody that was in our library and documents control section would have had that responsibility.

Mr. MARSHALL. My question is, was there anyone assigned the specific responsibility?

Mr. FIELD. I would say they were all assigned that responsibility.

Mr. MARSHALL. I don't mean to quarrel with you about your answer.

Mr. FIELD. I really mean that.

Mr. MARSHALL. I am concerned that nobody had the specific responsibility—unless you can tell me that it was Mr. or Mrs. so-and-so's responsibility to do it.

Mr. FIELD. I had the responsibility for security. I would tell people who were in certain areas, such as the people in the library area, that they were to do—they were to destroy the classified documents, if they were to be destroyed. If there were specific documents to be destroyed, to come to me for approval, as to whether they were to be destroyed. We returned—I believe we returned all of them. We got into a big flap about this with the CIA. We had 75,000 documents that were classified, many of which were our documents. And I believe we returned every one of them. So when you talk of destroying classified documents, I do not think we did.

Now, we occasionally had copies of things. I approved the destruction of those. And it could be any one of a number of people.

Mr. MARSHALL. What was the procedure for destruction of classified or copies of classified documents?

Mr. FIELD. We put it through the shredder.

Mr. MARSHALL. You put it through the shredder?

Mr. FIELD. Right.

Mr. MARSHALL. And were you the only one who had the specific responsibility to see that that information was put through the shredder, or did you delegate that to anyone else on your staff?

Mr. FIELD. Somebody would come to me and say, is it all right to destroy the copies of the material we had for today's hearing? And I would say yes. And then the person who had come to me and asked permission to do it, would do it.

Mr. MARSHALL. Who was in charge of seeing that various persons came to you when there was a decision to be made about destruction of copies of classified documents?

Mr. FIELD. I was.

Mr. MARSHALL. To your knowledge, did any of the staff members keep personal files in their desks containing classified information?

Mr. FIELD. Yes.

Mr. MARSHALL. Did you take any steps to stop this practice?

Mr. FIELD. The desks were all in a secure area.

Mr. MARSHALL. The question is: Did you take any steps to stop this practice?

Mr. FIELD. I didn't stop it. I encouraged it. This was a secure area. They obviously worked at their desks. I don't know of a desk at the CIA or the FBI where people don't work, have their documents, have their documents in files. So I encouraged people to work at their desks. I am not sure I follow what you are driving at.

Mr. MARSHALL. I'm sure you did. But I am talking about storage of classified documents overnight. Were they encouraged to store these documents in their desks overnight?

Mr. FIELD. I know that we had files elsewhere in the committee.

Mr. MARSHALL. Excuse me just a moment.

Mr. QUILLEN. Mr. Chairman, would the gentleman yield?

Mr. Field, did you, as staff director, deliver any of the copies of any report to any members of the staff of the Select Committee on Intelligence or the Committee on Intelligence in the Senate?

Mr. FIELD. No; we did not.

Mr. QUILLEN. Did you work with members of that committee during this hearing?

Mr. FIELD. We had contact with the staff.

Mr. QUILLEN. Not this hearing, but your hearing, the operations of the select committee.

Mr. FIELD. Right. We had contact with them. We worked primarily in the legislative area, as to proposals, that kind of thing.

Mr. QUILLEN. But no copies of your report were delivered to any staff member or anyone in the Senate?

Mr. FIELD. That is correct.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. FOLEY. With the committee's approval, we will stay in session until the second bells ring.

You may proceed.

Mr. MARSHALL. Did you retain a gentleman named Mr. Herb Brooks on the committee staff?

Mr. FIELD. Herb Brooks worked in the—yes, Herb Brooks worked in the document control section. He had 25 years of experience with the CIA, and I notice that when Mr. Bowers put together his report—by the way, he said there was a 24-year old girl who was in charge of security. That is incorrect. I was in charge of security. She carried out a number of functions related to security, so did Mr. Brooks. Mr. Brooks probably carried out more functions with respect to security than she did. And he had 25 years with the CIA. And that really ought to be included.

Mr. MARSHALL. Did you rely heavily on Mr. Brooks' experience in handling of classified information?

Mr. FIELD. No; I frankly was not impressed by the experience of any CIA or FBI people I saw in handling classified information. I think it is interesting that we have subjected our committee staff to this microscopic investigation—and I'm frankly amazed at how little has come out.

My experience with the CIA was that they were incredibly sloppy in handling classified documents. They would come up to me in the hall with a courier, and he would hand me a stack of things without ever asking who I was, and not knowing me. Somebody would point down the hall, that is Mr. Field down there—and hand me a stack of things and off he would go, oftentimes without my signing for it.

Mr. MARSHALL. I am a little confused by your statement that Mr. Brooks had 25 years of experience with the CIA, and that ought to be enough for anyone, and your statement that in your experience CIA doesn't know what it is doing when it is handling classified documents.

Mr. FIELD. I would not say it doesn't know what it is doing. All I am saying is I do not think they possess any particularly God-given greater ability at handling and organizing information than we did. Our records were far superior to theirs. When we returned documents, we had complete records, extremely accurate, of everything we had. We had every single one of 75,000 classified documents, and we returned it to them. We had documents they did not even know they had given us, that they had lost receipts. They used to call us up and ask us—

Mr. MARSHALL. That opens another line of questions. Do you know how you obtained documents the CIA did not know they had given you?

Mr. FIELD. They found receipts. They had lost them. They lost their records—their records on the back of envelopes. We were finding things for them constantly. They would call us up and ask us whether we received something because they lost records of it, and we knew.

Mr. MARSHALL. Do you recall instances with regard to the Jackson memo?

Mr. FIELD. That raises another very interesting point.

Mr. MARSHALL. Let me see if I can ask you a question first, before we get to that interesting point. Do you recall the Jackson memo? Does that trigger some meaning in your mind?

Mr. FIELD. Yes; it does.

Mr. MARSHALL. Was that not a specific instance where the CIA at least took the position with your committee that that memorandum had been taken out of their possession without their concurrence?

Mr. FIELD. We did not take the memo. We took the information from the memo. We took the information from hundreds and thousands of memos. They knew what we took, because they sat there, and you can bet your bottom dollar they watched every word we wrote down. They knew we had that. I read in Mr. Bowers' statement here that I had wanted that memo to be up front in the report or something. When I wrote the draft of the report, I didn't even know we had that memo. The only reason it got in late as a footnote was because the chairman asked where it was. I went down and found it, read it. And put it in at his request.

This is used very conveniently as kind of an innuendo that then it led off the two news stories, Daniel Schorr and John Crewdson, and because I wanted it up front and they had it up front maybe there is some relationship here. I didn't know we had it. I don't know where Mr. Bowers got that information, but I would appreciate if he is going to make that kind of allegation, if when he interviewed me he had simply asked me, "Did you have an excessive interest in the Jackson memo?", and the answer would be "No."

Mr. FOLEY. Mr. Field, I will let you complete your answer if you wish.

The committee will at this point stand in recess until 1 p.m.

Mr. Field, can you return at 1 p.m.?

Mr. FIELD. Yes, Mr. Chairman, I have an airplane back to Connecticut this afternoon.

Mr. FOLEY. We hope to be able to finish your testimony to accommodate that.

The committee will stand in recess until 1 p.m. this afternoon.

[Whereupon, at 11:35 a.m., the committee was recessed to reconvene at 1 p.m., the same day.]

AFTERNOON SESSION

Mr. BENNETT [presiding]. The committee will come to order.

We will reconvene on the note which we left off. I believe there was a statement in midair.

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Chairman, Senator Weicker is here, and I had talked with Mr. Foley. Senator Weicker would like to make just a brief statement, if he could. If it is all right with the committee, I would like to invite him just to make a brief statement.

Mr. BENNETT. With unanimous consent, it is agreed to.

We are glad to welcome our former colleague back.

Mr. WEICKER. Thank you very much, Mr. Chairman.

Mr. MARSHALL. May I inquire if I have the right to cross-examination?

Mr. WEICKER. Well, you can always try.

STATEMENT OF LOWELL P. WEICKER, JR., U.S. SENATOR FROM THE STATE OF CONNECTICUT

Mr. WEICKER. Mr. Chairman, thank you very much, and members of your committee, for allowing me to say a few words.

I am here watching your proceedings, which I think are very thoughtful, and very thorough.

Searle Field is not just an ex-employee of mine—he is now a constituent also, having bought a home in Mystic, Conn.

I am not here in any way to involve myself in the merits of the matter before you, but rather just to make several comments as to this man.

He was my assistant counsel on the Watergate and did an outstanding job. Searle is a person of enormous integrity, and enormous ability. And very frankly, I think that as an outsider, as to one who observed the proceedings over here on the House side, and the work of that particular committee, I think the committee did an outstanding job, and did a tremendous service for the American people. And I was very proud of the House of Representatives, as indeed I have been over the years for the work done here.

But I know that what this town needs, very frankly, is more Searle Fields. And believe me, when you go ahead and lock horns with the establishment, they are going to close the ring, and they always do. And the first ones to go ahead and feel the crunch are the idealists, are those who refuse to compromise, are those individuals of integrity. And I want to make sure that we continue to attract the type of people that have those qualities. Searle is one of them.

Very frankly, I offered to him a position back on my staff, after he was through with his work over here in the House. He chose not to accept, not on the basis that he would not want to work for me, or he didn't feel the job was worthy of his abilities, but very frankly, he was discouraged. And I think that is bad.

As I say, if there is anything this country needs, and this Capitol needs, it is courage, it is idealism, it is the willingness to get the truth out. And if you are going to go ahead and confront the establishment, and I have done it, believe me, they play rough.

But, you know, when it comes to a stand-up-and-be-counted time, I will tell you where I want to stand, next to guys like this.

That is really all I have to say. Thank you.

Mr. BENNETT. Thank you very much.

I think really we would be better off if we went to answer that rollcall and came right back.

[Short voting recess.]

Mr. FOLEY. The Committee on Standards of Official Conduct will resume its sitting. The Chair wishes to explain, unfortunately we had two votes seriatim which has taken the time for members to respond and return.

Counsel.

Mr. MARSHALL. Do you wish to complete the answer that you were in the middle of when we suspended or had you completed your answer?

Mr. FIELD. I had one other point I wanted to make. This was in reference to the Jackson memo which appeared in the final report, and to go back to the issue of taking notes at the CIA and the propriety of that, I would point out that I would say most of our investigating was done via the technique of sitting in a room where files would be brought out and our investigator would take rather extensive notes and would bring the notes back in. The fact is that the CIA eventually provided us with typewriters because some of our investigators could type faster than write so it was not unusual for us to take information from a memo that had been made available to us and use those notes as part of our investigation. I think that is helpful.

There is sort of an implication the Jackson memo was purloined and that was very much part of our routine investigative method.

Mr. MARSHALL. In your testimony this morning you mentioned there at one time were records kept by the select committee staff concerning distribution of various drafts of the select committee report?

Mr. FIELD. That is correct.

Mr. MARSHALL. Do you know where those records are now, sir?

Mr. FIELD. I would assume they were with the committee records of which—I believe the Clerk of the House has ultimate custody. I guess they are at the Archives.

Mr. MARSHALL. Were there logs showing distribution to particular persons on particular dates of particular drafts?

Mr. FIELD. Yes. The word log is a word of art but there were records. Identification of who had copies, how many copies, that kind of thing. From time to time we would turn them into reports. There would be a memo to me or the chairman saying this is the result of our latest—

Mr. MARSHALL. These were in existence at the time you left your duties as staff director?

Mr. FIELD. I would presume they were. I can't guarantee. The day I left I didn't go back to check to see if they were still there. It is possible somebody, when there was no more use for them, had destroyed them. But I would doubt it.

Mr. MARSHALL. Mr. Lehman, who was a member of the select committee, testified that he was unavailable to have received his copy of the January 23 draft.

Mr. FIELD. That is correct.

Mr. MARSHALL. And that he attempted to obtain what he referred to as his copy on January 24, the following day, which was a Saturday, by going by the select committee offices and inquiring as to the whereabouts of that copy. He stated although the staff made a search they were unable to produce his copy and that another copy was created on the spot, as it were, and handed to him.

Were you aware that Congressman Lehman was unable to find his copy when he went by the staff spaces on January 24 and, if so, was an investigation made to determine the whereabouts of that copy?

Mr. FIELD. I would address myself to the use of the word staff couldn't locate them. On that Saturday morning—we had been through a very intense week up until 2 or 3 o'clock in the morning, night after night. The previous weekend we had worked all weekend. That Saturday morning I finally took off and went shopping. I don't think there were maybe more than one or two people in the committee offices. The fact the staff would not be in that morning would not be surprising to me if one of the members went by and you didn't have your complement of librarians and people who could locate these things and it did not come to my attention Mr. Lehman had had a problem with his copy. Come Monday I am sure it was worked out. But if he had been given another copy, his copy was then identified and so forth.

Mr. MARSHALL. My question is, do you know for a fact—not whether you are sure—that Mr. Lehman's copy, the copy delivered to his office on the 23d which he did not receive and which he testified was then taken back to the select committee spaces, was ever accounted for as to its whereabouts?

Mr. FIELD. As I testified, I don't recall the Lehman incident. I do recall the early part of that next week going through checks of the copies and being satisfied that all the copies were accounted for. So in a general sense my answer would be yes, I do not recall the specific instance.

Mr. MARSHALL. You do not know where Mr. Lehman's copy was at the time he attempted to locate it on January 24 specifically?

Mr. FIELD. No, although I wasn't in Saturday morning.

Mr. MARSHALL. Did you know Mr. Daniel Schorr before undertaking your duties as staff director?

Mr. FIELD. I would want to be careful about the use of the word know. I knew who he was.

Mr. MARSHALL. Had you ever met him?

Mr. FIELD. I watched television. I don't recall whether I ever met him or not. I know he had covered the Watergate hearings on the Senate side. I had no dealings with him over there. We met at some point when reporters were standing around on a break. I may have met him. It didn't make enough impression for me to recall being intro-

duced to him. I did not know him in any sense that I would walk up to him and strike up a conversation or that he would know me out of the blue.

Mr. MARSHALL. Did you from time to time while you were staff director seek Mr. Schorr's advice or guidance as to how the select committee should handle its dealings with the press or deal with the questions of leaks?

Mr. FIELD. Let me begin with another description of Mr. Schorr.

Mr. MARSHALL. I hope you are going to end with an answer to the question.

Mr. FIELD. I will. No question about it.

I did not have any relationship with him in that sense. Let me put it in colloquial terms. I never had a drink with Daniel Schorr, I never did anything socially with him, never had dinner or even a cup of coffee with him. To the best of my knowledge I have never entered into a conversation with him outside of such as in this room where we held a great many hearings where he might wander up to the table and ask some questions or out in the hall, that type of thing when we were walking out. So I did not have that kind of relationship with him.

Now, what you are referring to is on New Year's Eve the committee had come across what I considered a very serious matter. The FBI—we had uncovered what appeared to be a kickback scandal in the FBI, a major scandal. The FBI obviously was concerned about this. Just prior to New Year's Eve they sent a number of agents out and attempted to intimidate one of our witnesses. They had made up a statement for him to sign recanting part of his testimony before our committee and according to Mr. Kaiser, who was the witness, had forced him to sign it.

We were extremely concerned about this matter because the treatment of our witnesses was a very important, very serious problem. We developed information on that and I want to say more about that and I am sure you want to talk more about that.

I was quite concerned that the FBI was going to release a publicity wash on us announcing to the public that one of our key witnesses in that scandal had recanted some of his testimony before the committee. I wanted to make sure that the true facts were known before the FBI hit us with this publicity.

After we had put the facts together I called Daniel Schorr because it was New Year's Eve, to ask if they had a news program that night because I was going to make some information available vis-a-vis the treatment of our witnesses, nothing to do with the substance of our investigation, nothing to do with our work product, strictly the procedures and the treatment of our witnesses. I was not going to make it available if there was not going to be any news in the newspapers, anything like that. I didn't know how things operated on New Year's Eve. It is a very unusual day of the year. I called to see if there was a newscast. I was not asking for his views, I was asking for information. I got the information. He said there was a newscast. I said, fine, thank you. We will have a packet of materials the committee will be making public, a letter to the Attorney General of the United States, a public letter, and this will be available this afternoon.

That I hope answers your question did I call him. I believe that is what you were referring to.

Mr. MARSHALL. Let me ask you this. To be completely fair with you, I am not trying to trap you at all, but did you ever say: "Look, I called Daniel Schorr. I get a lot of good advice from Daniel Schorr. He has given me a lot of good advice and I asked him what to do on this situation"—meaning the situation that you have just testified to—"and he said the best thing to do is make a direct attack."

Will you comment on whether you made that statement or words to that effect.

Mr. FIELD. I do not recall words to that effect. As I have said, my recollection is that I called to find out if there was a newscast, if this would be a good night to release some information that we were quite concerned about and we wanted to make sure came out and got due attention so we would not be caught in a crossfire with the FBI trying to discredit our witnesses.

Mr. MARSHALL. Is this how newsmen happened to be in the committee spaces later on December 31, 1975, specifically Mr. Schorr, Mr. Jim Adams, Mr. Lawrence Stern, and perhaps others?

Mr. FIELD. I would think that report, the materials we put together on that, were distributed to the press in general, to all press. They were supposed to be.

Mr. MARSHALL. Do you recall those persons being there on that day?

Mr. FIELD. Yes. The instruction was this material was to go to the press gallery. This was a public letter to the Attorney General of the United States enclosing the facts that we had developed from Mr. Kaiser, nothing from the work product of our committee.

Mr. MARSHALL. Was a transcript shown to those reporters on that day when they were there?

Mr. FIELD. A transcript relating to the events of the treatment of one of our witnesses. It did not contain any information related to the relationship between U.S. Reporting and the FBI, related to the kick-back scandal or any of the targets of that investigation. It did not contain any of our investigative work product. It contained strictly the interview with Mr. Martin Kaiser, that he wanted to make sure for the Attorney General's purposes he had an accurate and factual description from Mr. Kaiser's own mouth of how the FBI had treated one of our witnesses.

Mr. MARSHALL. Was this meeting set up at your direction or someone else's direction?

Mr. FIELD. That was setup explicitly at my direction—the meeting with Mr. Kaiser?

Mr. MARSHALL. The meeting with the newsmen later on that day to receive the package you described?

Mr. FIELD. Yes.

Mr. MARSHALL. I want to make certain. Was that meeting with the newsmen in the committee spaces set up at your direction or someone else?

Mr. FIELD. Yes, at my direction.

Mr. MARSHALL. Were all newsmen invited or just selected newsmen?

Mr. FIELD. I am going back in my recollection now. I would say that the materials were to be distributed to all newsmen, any newsmen who came by the committee and wanted to know what these were and so forth would get a description of them. As I recall, there was no major attempt to select out newsmen.

Keep in mind there were obviously certain newsmen who covered us, typically AP, UPI, NBC, ABC; the large organizations would have somebody who would cover you constantly. Those people obviously would be in line for an explicit description of exactly what it is we are saying here.

Mr. MARSHALL. Do you recall a conversation with Mr. Oliphant concerning the New York Times article by Mr. Crewdson, a copy of which has been previously exhibited to you during the morning testimony, in which Mr. Oliphant said the following while walking back with him in the committee space: "Boy, they really put a lot in the New York Times report." That is what he said. You said: "Yes. I didn't think it was so bad when I looked at page 1, but when I got to page 14 it was terrible. You know I had to call the New York Times and tell them not to print any more."

Then you said editorially, "Boy you really feel like an asshole when you have to tell the New York Times to hold your own story."

Did you make those statements to Mr. Oliphant?

Mr. FIELD. I never said it to Tim Oliphant.

Mr. MARSHALL. Let's go on to this. Are you familiar with the practice in Washington of distributing advance copies of rather lengthy reports or reports that may require some analysis to newsmen in advance of the date they are actually released?

Mr. FIELD. Yes.

Mr. MARSHALL. Was that practice ever followed by the Select Committee on Intelligence to your knowledge or by any member of the staff?

Mr. FIELD. I don't recall. The only document I would know of is the final report. We have the instances where we were subpoenaing Dr. Kissinger and holding him in contempt. We have reports on that. I don't believe any of those were released ahead of time.

Mr. MARSHALL. I want to clear up your last answer because there may be an interpretation that you do not wish to give. Let me ask you specifically, did the select committee or any member of its staff, to your knowledge, distribute advance copies, as we are using that phrase, to any member of the media or to any member outside the select committee?

Mr. FIELD. Of the final report?

Mr. MARSHALL. Of the final report or the January 19 draft or any change in between or afterwards.

Mr. FIELD. Not to my knowledge. Unless you want to call Congressman Aspin's lending of the report to the CIA a distribution of an advance copy.

Mr. MARSHALL. Any other besides whatever the facts may be on that?

Mr. FIELD. No. I know of no other.

Mr. MARSHALL. You made no such advance distribution, as we are using that term?

Mr. FIELD. Absolutely not. As a matter of fact, as you know from Mr. Aspin's testimony, I steadfastly refused that.

Mr. MARSHALL. When the Select Committee on Intelligence adopted its final report on January 23, 1976, was it your belief that that report was going to be made public? I am talking about on January 23.

Mr. FIELD. Yes.

Mr. MARSHALL. I take it, it was a surprise to you when the House voted on January 29 that the report was not to be made public?

Mr. FIELD. There were intervening events.

Mr. MARSHALL. Would you like to elaborate?

Mr. FIELD. On Friday, when you had the 9-to-4 vote, this became the report of the committee; clearly there was an anticipation this would some day be a public report. At that time there was no inkling that the House would act—as you gentlemen all know, the committee report would have become a public report simply by the chairman putting it in the hopper, filed with the clerk. The only way something could have intervened was if for some reason the House had an opportunity to vote on some aspect of this. We saw no prospect of that until, I believe, on Tuesday, when Chairman Pike had gone to the floor and asked for a unanimous consent for a 1-day extension of the life of the committee.

Mr. FOLEY. Would you identify the date?

Mr. FIELD. Tuesday the 27th.

So the minority members with individual views could have 5 days for them to be written and attached to the report. The House was not going to be in session on Friday so we had to get a resolution on the

floor of the House to allow us to file on Friday instead of on Thursday when the House would be in session. When he didn't get unanimous consent on the floor, we then were faced with the prospect that we would have to go to the Rules Committee and get a rule. It was only at that point that an opportunity became available to the House to do something which would otherwise interrupt the normal flow of publication of this report.

As you know, on Wednesday we went to the Rules Committee, and an amendment was attached to our extension which suppressed the report. The point is, between Friday and Tuesday I don't think there was any inkling on our part that this would not become public. We obviously did not want it to be public until Friday. We didn't have our printed copies until Friday.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in Rolling Stone on April 8, 1976, that he had possession of a draft of the select committee report of January 25, 1976. Did you give this report or a draft of any part of the report or a part of the text to Mr. Schorr?

Mr. FIELD. I am glad you asked that question [laughter]. I waited for 3 hours and I wondered when somebody was going to ask what I see to be the critical question here.

Mr. MARSHALL. Would you answer it?

Mr. FIELD. Yes; I did not give a copy of the report to Daniel Schorr. I did not give him a part of the copy of the report, I did not brief him on the report, I do not know who did it. I do not know who gave him a copy of it. I have no facts or evidence which would relate to the giving of the report to Daniel Schorr.

Mr. MARSHALL. I take it from your added answer you know of no one who did give the report or a part of it to Mr. Schorr?

Mr. FIELD. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee report in the Village Voice or any part of the report that was published in the Village Voice in its issue dated February 16, 1976?

Mr. FIELD. No; just two comments. Let me go back to the Rolling Stone thing. There is sort of a presumption here that that is accurate and what appears in the Rolling Stone is the gospel as to when Daniel Schorr got the report. Maybe I am a little more skeptical but I don't tend to believe everything in the Rolling Stone. I haven't read the Rolling Stone articles but it strikes me very strange that kind of information would be coming out in that form.

I throw that element of skepticism on my part. I am not all that believing as to timing.

Mr. MARSHALL. I really don't want to cut you off. I want to be completely fair to allow you to put on the record what you deem relevant but I would like to request an answer to my question. Do you have any knowledge whatever as to the circumstances surrounding the publication of the report or any part of the report in the Village Voice?

Mr. FIELD. I began the answer with no.

Mr. MARSHALL. Who has any knowledge of the circumstances surrounding the publication?

Mr. FIELD. I would suspect the people at the Village Voice and the attorney who handled it and Daniel Schorr. Beyond them I have no knowledge.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any draft of the report or any part of the draft of the report to anyone outside the Select Committee on Intelligence?

Mr. FIELD. Yes; to Mitchell Rogovin, to Martin Packman.

Mr. MARSHALL. Excuse me. Did you give the report to Mr. Rogovin? I thought your testimony was you refused to let him have it?

Mr. FIELD. This was the initial draft.

Mr. MARSHALL. Is there anyone else that you gave a draft of the select committee report?

Mr. FIELD. No; certainly no unauthorized person. There may be somebody like Mr. Packman or Seymour Goldman of the CIA but nobody outside of CIA, State Department and members of the committee.

Mr. MARSHALL. Members of the select committee?

Mr. FIELD. That is right.

Mr. MARSHALL. Do you know of anyone who did?

Mr. FIELD. No; I don't.

Mr. MARSHALL. Mr. Chairman, I think this concludes my public session.

Mr. FOLEY. Very well.

Do any of the members have questions they would like to ask at this time? It is the intention of the Chair to receive a motion to resolve the committee into executive session.

Mr. BENNETT. I could ask in closed session but if I could ask one or two questions in open—

Mr. FOLEY. Mr. Bennett.

Mr. BENNETT. You testified earlier about the Italian copy. Did you identify the date on that copy?

Mr. FIELD. I have not, although searching back through my recollection it was after that Monday or Tuesday. As I seem to recall, it was late in the week of the 26th. It would have been sometime around Wednesday or Thursday.

Mr. BENNETT. You never saw the contents of that?

Mr. FIELD. I read the article. It was a front-page article in the New York Times.

Mr. BENNETT. Could you identify what version it might be?

Mr. FIELD. Version of the report?

Mr. BENNETT. Yes; you said the 19th or the 23d.

Mr. FIELD. It appeared to be the final, the 23d-24th version.

Mr. BENNETT. What is the earliest date that can be attributed to the Schorr copy on the basis of its content?

Mr. FIELD. I would say that really couldn't have been before Thursday, the 23d or 22d, because there were a large number of changes made on Thursday. It would have been very difficult for somebody to have incorporated them via some other means other than getting the actual report.

Mr. BENNETT. Earlier in your testimony you said you didn't identify any secret information being released in the report or didn't identify any secret information going out from the committee, but didn't the report contain secret information?

Mr. FIELD. This is a complicated area. My answer would be this, that we did not have the authority to classify information. What we did was as the congressional equivalent we had a procedure for treat-

ing it as executive session material with rules which we felt were simply rules which would be known in the executive branch as secret material. We treated the report as executive session material. When the committee voted 9 to 4 to release it, the committee voted not to keep it as executive session material any longer.

Now, whether at that point what had been executive session material became declassified in the executive branch sense, is an issue, as you know, has gone to the floor to the House. I believe the House has expressed its opinion they do not feel that was a proper analogy, in other words that the releasing of it from executive session thereby declassified it in the sense as we know the words.

That was an issue that went to the floor. As staff director and at the staff level we didn't really get into that philosophical debate too much and I would prefer to leave that to the Members of Congress who have to decide whether Congress can declassify information.

Our committee I think felt—I know—that they had declassified it by voting it out of executive session. Now, the House to some degree disagreed with that. I would just as soon stay out of that.

Mr. BENNETT. I understand the confusion about it because I think it led to most of the problem the committee was confronted with but I think the difficulty is apparently the committee, from the testimony we have so far had, at least the committee staff and probably the committee itself, felt not just that Congress could declassify—which obviously it can, because it makes the laws of the country and it can make a law to declassify anything it wants to—but apparently the committee and its staff felt a Member of Congress could declassify or a committee of Congress.

That is a concept which I have never heard urged by anybody in all of my years in the Government.

Normally the procedure is that when something is classified it can't be paraphrased or can't be lifted and put in some other paper without carrying the same classification. When you say that Congress couldn't classify it, it is my understanding that everybody who has secret information has to allow that classification to continue in anything that the material is used in.

I realize the statutes are a little fuzzy on the subject and the regulations are, but that has always been my opinion and apparently it was not shared by the committee or its staff. Is that correct?

Mr. FIELD. The committee very clearly felt it had the authority to treat the material as it saw fit through its vote. If it felt it was not classified they could vote on it and say we are not treating this any longer as classified material.

The staff I think simply followed the committee on this. We did what the committee decided. If the committee said we are voting it out of executive session, we feel it is appropriate to publish the report in 5 days, as staff director I wasn't going to sit there and say no. I worked for the committee. When they made a decision like that, obviously we abided by it.

Mr. BENNETT. Did anybody on the staff ever consider pointing out to the committee that the way things were going the committee was going to declassify before Congress ever had a chance to see whether it ought to be declassified or not?

Mr. FIELD. I didn't think we had to point out to the committee that some of the material in there had come from classified documents. They certainly knew. As we went through the report really for hundreds of hours with the committee—many, many hours—we would tell them exactly where each quote had come from, what the nature of it was, the pros and cons of it, the CIA's objections and thoughts. So the committee was thoroughly apprised. That we felt was our duty, to let them know exactly what the facts were.

What the committee decided we abided by.

Mr. BENNETT. In retrospect you realize, however, you presented Congress with the necessity of voting on whether or not they would release a report which had secret information in it without Congress ever having an opportunity to study it by the procedures by which you presented it to the floor?

Mr. FIELD. I would say first of all, you say you presented Congress—

Mr. BENNETT. I mean the committee. In retrospect you can say the committee presented to Congress a report which they had to either make secret right then, knowing it had secret information in it, or had to expose without ever knowing what the contents of it were.

Mr. FIELD. The Congress had appointed this committee to represent it and this committee as representatives of the Congress had not only read it but had read it in minute detail with extensive reporting of every single item that could be controversial in respect to secret or not secret. I think it is something of an overstatement to say that the Congress had not read it. This committee had read it, had read it extensively and voted 9 to 4 with a bipartisan vote.

Mr. BENNETT. But analogously, I meet almost every day in a committee which has secret material and we report to Congress as we must on that legislation, and we never put in the report anything that is secret and we have the same direction that your committee has. But I assume from the leadership you had in the committee, assume because the committee was appointed and because it was going to look at secret information, it had a right to declassify it in a report which Congress itself would never have an opportunity to read although it knew it had secret information in it. That is an astounding conclusion. It is astounding to me that you would ever come to this conclusion.

Did you ever think about asking that the committee have the advice of people who handled secret material to tell you how it should be handled?

Mr. FIELD. If I could back up just a minute, this whole issue of whether we felt we had the authority and so forth. I really think is better directed to the members of the committee. I did not get into the philosophical debate on this too much.

Mr. BENNETT. I asked you the same thing.

Mr. FIELD. I am not here to second guess their votes and their positions on this type of issue.

Yes, we sought advice on the alternative ways, and we did present them to the committee. For instance, we could have had a classified report and an unclassified one—we couldn't classify it; we could have had an executive session report.

Mr. BENNETT. I think the people who handled secret material would have told you to stamp it secret. This leads me to the last question I

want to ask you and that is: You have expressed concern about the fact that this material was leaked but you have given me the impression that you are more concerned and were more concerned about the fact that the committee was embarrassed in its competition with the executive branch than you were concerned about the fact that secret material might fall in the hands of our enemies.

I can understand how you might have that conclusion if your guidelines were that you could just declassify at will and any member can declassify anything he wants to and a committee assigned to handle material can just put it into a report and that is the end of declassification, which, I assure you, that is not the ordinary way Congress operates.

They handled such matters every day. I just came from a CIA subcommittee myself that met today. So that material was viable. We will have a report eventually but it won't have secret material in the report.

In retrospect, do you think maybe more thought should have been given to that aspect of revealing secret material?

Mr. FIELD. There is a bit of a misconception perhaps as to how we went about this. You say we thought we could declassify at will and it creates the feeling of a cavalier attitude about declassifying. We put an enormous amount of effort in trying to determine whether or not some things remained in the report or not. We debated it, we voted, constantly we passed on the advice of the best people in the United States of America to the members of our committee as to what the various positions were as to each piece that we considered.

I suspect we put more thought and heartache and effort into it. We took out hundreds if not thousands of things in the report as a result of our deliberations, discussions. On the other hand, let's not kid ourselves about what goes on in the executive branch and set up a straw man. There is this magnificent system downtown of declassifying. I recall one day when we had one document we wanted to declassify that was almost 700 pages, and the CIA declassified it for us in about 10 minutes.

The people I was negotiating with on the declassification had been on the job, had been employed by the CIA for less time than I had been employed working on the investigation from our end. There was not 25 years' experience on the part of the fellow who was sitting right there and had the authority to immediately say that is fine, that can go in the report.

I am not trying to create the impression I take a casual attitude toward this, but let's not paint the picture of Congress as just flipping this around—let's print the whole thing.

We carefully considered it. I think we put in a more sincere and hard and difficult effort than I have ever seen in the executive branch declassification.

Mr. BENNETT. I am of the opinion what you say, you are saying from your heart and the way you feel about it. I just don't quite understand how you come to the conclusion that the Congress which has the power to make law and has the power to say who is to classify and who doesn't declassify has delegated to a committee or an individual in Congress the right to declassify something. It seems to me it is up to Congress to pass better laws with regard to classification and declassification, not to abuse the rules and regulations we have now and to abuse what we now have is what disturbs me about this.

I think if I had been on the staff, my major disturbance I think would be not that the fact that the committee would be embarrassed—committees of Congress are hardly ever very popular—but more the fact that something might be released that would hurt the country, and I have yet to have heard that said as a major thing coming from anybody on the committee. I have never heard any Congressman or member of the staff say, “I was really concerned that information harmful to our country could be released.” It is always “The committee might be embarrassed.” There is no reason to be embarrassed. When you are a giant—and Congress is a giant—and Congress in this matter is not making adequate laws for the preservation of security. It can make laws, it can say a Congressman can declassify it, can say that a committee of Congress can declassify. It said none of it.

It allowed the executive branch; and the fault is not the fault of the executive branch; the fault is of Congress in not making rules and regulations with regard to classification and declassification.

To sum up, the thing that distrubs me most about this is the committee is more disturbed about the fact the committee was embarrassed by the leaks than it was as a matter of not controlling the materials in the processes of legislation and reporting than it was about leaks that might be hurtful to the country.

Mr. FIELD. Mr. Bennett, in response, I think the reason you may have that impression—there may be a good reason for it—is that by the time you are down to the point of the committee voting on its report we had already shown our concern for secrets that might hurt the Nation by spending, as I say, many, many hours. On the staff we worked until 5 o'clock in the afternoon with the committee and then would go into the session with the CIA, FBI, State Department, until 2 or 3 in the morning. We had been doing this for months, not until 2 or 3 in the morning, but had been talking to them. We had shown our concern that way.

By the time we came down there, we were confident that we had resolved that issue, that we had through enormous effort and through many hours and our expression of concern through those meetings, through gathering that information, making an honest effort to report on that, believe me, we spent more time on assuring there was nothing in there that would hurt this country than we did on anything else in this investigation.

I also want to make a point. I am not a screaming radical liberal. I am not here to destroy the United States. I am a citizen of this country.

Mr. BENNETT. Nobody has accused that of you, certainly.

Mr. FIELD. My grandfather was the chief of the State police. I am not some kind of SDS. To imply that I would not care if there was something in that report that could in any way harm my country—

Mr. BENNETT. Sir, to be very frank with you, nobody has given me the impression at the hearings they were more concerned about whether or not some secret material might be released that would be damaging to my country; that they were more concerned about that than they were about the embarrassment with the committee. Nobody has given me that impression. Maybe I am getting that impression from you now. Are you more concerned about that?

Mr. FIELD. Absolutely. We were extremely concerned and that was why we spent so much time with the CIA and the various other agen-

cies making sure that nothing that came out in that report would be beneficial to anybody else, any other country.

Mr. BENNETT. To summarize for you, I think you are saying the reason why you are not so concerned now is because you feel that you have done such an excellent job in keeping from the public anything that would be damaging to our country; is that it?

Mr. FIELD. Yes, I was satisfied with the process we had gone through with the CIA. I could reveal in executive session the kinds of things that were left in the report that were not settled by negotiations, and I think if you were to take the time, you would see there were more political considerations in their objections that were left, than there were genuine what I call national security objections.

This is a judgment. It takes time to explain these things.

Mr. QUIE. Mr. Chairman.

Mr. FOLEY. Mr. Spence, do you have any questions?

Mr. SPENCE. I yield to Mr. Quie.

Mr. QUIE. Are you going to go down the line? I just had one question I wanted to ask before we go into executive session.

Just one thing because I expect we will go into executive session and Mr. Marshall is going to proceed with questioning.

In order to get this whole picture clear in my mind, on January 19, Mr. Field, you indicated that was the first time the report was made available to the members and Chairman Pike.

Mr. FIELD. Yes.

Mr. QUIE. When was the report put in a folder, or whatever it is, ready for them?

Mr. FIELD. It was right about the same time. You are talking a question of hours. Sometime during the night of the 18th to the 19th. I would say about 4 o'clock in the morning.

Mr. QUIE. The staff was working Saturday, Sunday, and into Sunday night?

Mr. FIELD. Yes.

Mr. QUIE. That is my question.

Mr. FOLEY. Mr. Spence.

Mr. SPENCE. Just a few short ones, Mr. Chairman.

In the area of security of the copies of the drafts of the documents that were passed out, you said you didn't number these documents but you still had a good record of who had what and you could tell where all the copies were. What if someone would have called up and said they found a copy of this report on a bus downtown somewhere without any number on it or anything; how could you have told whose copy it was without canvassing all members?

Mr. FIELD. That is what we would have done, going to the people who we knew had copies and ask them if they still had copies.

Mr. SPENCE. Mr. Lehman has never yet found his copy and you gave him another copy. Did you have two copies charged out to him with no numbers?

Mr. FIELD. There may be a slight misconception. When he said he had his copy—

Mr. SPENCE. Working copy, marginal notes and so forth.

Mr. FIELD. We didn't necessarily treat it as his copy. If, for instance, the changes we introduced into the copy were made and we inserted the new pages and took out the old ones, we may say that is a copy we

now have in the committee. If Mr. Kasten came down and said—let's say we had Mr. Kasten and Mr. Lehman's at the same time. We would get Mr. Lehman's updated and there are no apparent notes in the margin that would be of value to him. Mr. Kasten's isn't done yet. We might give Mr. Lehman's copy to Mr. Kasten. The record is he now has a copy and Mr. Lehman does not yet.

Mr. SPENCE. You said the staff had six copies and two because some people didn't bring theirs. Each time you gave a copy did you make them sign for it and they would say, "I received this date copy No. 6" or just a copy?

Mr. FIELD. Just a copy. We would keep a record of the fact they received a copy.

Mr. SPENCE. And they may have two copies?

Mr. FIELD. Yes. Some members did.

Mr. SPENCE. Do you have any way of recording or keeping a record of the people who made copies of pages on the Xerox machine?

Mr. FIELD. I am not sure I follow.

Mr. SPENCE. You had a Xerox machine there?

Mr. FIELD. Yes.

Mr. SPENCE. People would take parts of it and Xerox pages and take that all with them. Was there anyone there to log out Mr. so-and-so made a copy of pages 34 and 35?

Mr. FIELD. We did that for them. We would take the report and we would take it down and take out the pages that were to be replaced and put in it the new page which we had Xeroxed. Our people were responsible for that. That was in a secure area.

Mr. SPENCE. They logged that in the log?

Mr. FIELD. There would be no reason to log that.

Mr. SPENCE. I am talking about extra pages, valid pages, not corrections, and I want these 2 pages to Xerox.

Mr. FIELD. I don't believe we ever made up extra pages so somebody could take, say, page 73 with him. We only made it up if there was to be a correction. We would put in the new one, take out the old one and destroy it.

Mr. SPENCE. Could a member go in and make his own copy?

Mr. FIELD. No. As a matter of fact, one of the members came in and wanted to take a look at the report, and to show you the kind of security we had, one of our staff ladies took the report from him and when he got angry she sat with it in the ladies' room until he went away.

Mr. SPENCE. You talked about a January 22 meeting with people from the CIA, that they took a copy home that night. Did they have to sign for it?

Mr. FIELD. No. I had a record of that and informed the person who was keeping records—not the CIA. The State Department person I gave the copy to, I informed the person that night she was there that I had given a copy to the State Department.

Mr. SPENCE. You said some other people told you the CIA took it?

Mr. FIELD. Yes. They didn't sign for it; our record shows they took a copy.

Mr. SPENCE. Does your record today show that CIA took a copy home that night?

Mr. FIELD. We would have to go back to the records.

Mr. SPENCE. You testified earlier that people told you.

Mr. FIELD. It is my recollection.

Mr. SPENCE. Other than word of mouth can you verify something by your logs?

Mr. FIELD. The only way to verify would be to go back to the records.

Mr. SPENCE. You have something like 70,000-odd classified documents, I guess, from CIA, DOD, and different people, I suppose. Did you return all of these? Has it ever been agreed on the date by CIA and you and your committee they have all been returned?

Mr. FIELD. I am confident in saying under oath that we returned every single document. They initially said there was a discrepancy of 280 or something like that. Out there we spent literally half an hour, hour and a half, something like that, and by going back to our records immediately pointed out to them 190, some of them, or something like that. That was 5 o'clock at night. At that time we called the chairman and he said this is just a sham.

Mr. SPENCE. If someone from CIA said, "Document 430," and you say "Here it is" and check it off hand, go down a list, how did you do it?

Mr. FIELD. They had a list of what they had given us. They had a list of what we returned. We showed in about half the cases where they said they had given us something they hadn't, and we could prove it. When they went back and checked further and went down and looked in other rooms, they would find, sure enough, they had made a mistake. I don't mean to sound like I am badmouthing the CIA but their records were not good. Our records were far superior.

Mr. FOLEY. Mr. Hutchinson.

Mr. HUTCHINSON. No questions.

Mr. FOLEY. Mr. Quie.

Mr. QUIE. No.

Mr. FOLEY. Mr. Mitchell.

Mr. MITCHELL. Thank you, Mr. Chairman.

In your efforts to stop leaks did you at any time ask anyone if they were divulging information that shouldn't be let out? Did you query one person?

Mr. FIELD. Yes.

Mr. MITCHELL. Who?

Mr. FIELD. I throughout the investigation would—this came up a number of times and I would ask the staff. I would ask them in meetings, I would ask them individually. I probably asked all the staff at some point or other whether they had some relationship with newsmen. We had meetings where I would lay down the law, where anybody caught talking to a reporter would be fired. This would be the one thing that would destroy the committee. We had experience in this from Watergate. The common tactic is to evade the issues, evade the facts. If something would appear in Newsweek that could have been from our committee I would oftentimes go down and ask those working on that issue, "Did anybody talk to you from Newsweek? Do you know anybody who did? Does this look like it came from your materials?"

Mr. MITCHELL. I am confused about accountability. You stated on several occasions that you had maintained accurate records of distribution of reports and I am sure you are familiar with what Mr. Bowers says as a result of his investigation. On page 11 he quotes the staff as

saying there was a rush, it was extremely disorganized. Another staff member is quoted on page 12 as saying we lost control as soon as they started discussing the report.

I am going to read Mr. Bowers' statement and I would like to have you tell me which parts of it you feel are inaccurate. This is what Mr. Bowers had to say:

It was so disorganized that those in charge could not recall who made the deliveries to which offices.

Is that correct?

Mr. FIELD. You are now getting back 6, 8 months, but I could probably tell you a pretty good job of who distributed to what office.

Mr. MITCHELL. Would you, please?

Mr. FIELD. I know that Roger Carroll delivered some of the copies.

Mr. MITCHELL. To whose office? Would you rather refer to your record you are talking about?

Mr. FIELD. One of my problems is all of our records are locked up in the Archives. We have no access to them. You are asking me questions under oath without my being able to refer to my notes and records and it is a little unfair. I can only say to my recollection at the time we knew full well. We knew which offices Carroll was going to.

Mr. MITCHELL. And the time the deliveries were made? That would be part of your record you referred to?

Mr. FIELD. I would like to know who is saying this.

Mr. MITCHELL. This is Mr. Bowers' conclusion. What I am asking you for is where you disagree with Mr. Bowers' statement.

Mr. FIELD. I disagree with him on that point.

Mr. MITCHELL. So you do feel you knew not only who made the deliveries to which office and the records will probably show this, you also knew the time they were made?

Mr. FIELD. They were all made a little after 12 Monday morning.

Mr. MITCHELL. Mr. Bowers also says there was no specific control system. You disagree with that?

Mr. FIELD. I have testified at length about that today.

Mr. MITCHELL. Copies of the draft contain no identification whatsoever.

Mr. FIELD. That was per instruction of the committee.

Mr. MITCHELL. They were not numbered.

Mr. FIELD. As per instruction.

Mr. MITCHELL. Why is that? Why wasn't there a number on that? What was the rationalization?

Mr. FIELD. I would respectfully suggest that you ask the chairman.

Mr. MITCHELL. The chairman specifically requested the documents not be numbered?

Mr. FIELD. That is my recollection.

Mr. MITCHELL. The last thing Mr. Bowers said, "nor were they charged out so they could be accounted for." Do you feel they were?

Mr. FIELD. What do you mean charged out?

Mr. MITCHELL. A log kept.

Mr. FIELD. We had a record of who had copies and we used to call them up. I am sure he received this testimony. We had people go back to the offices to check to make sure they were there and that type of thing.

Mr. MITCHELL. I have no further questions, Mr. Chairman.

Mr. FOLEY. Mr. Cochran.

Mr. COCHRAN. I have no questions.

Mr. FIELD. Mr. Chairman, there are just one or two things which I would like to address and I won't take much time before we go into executive session. I don't want to take up your time but I feel while we are in open session it is important to get one or two things on the record.

The first thing is I am slightly concerned about some of the tone of this report [indicating], in particular one phase of it where—

Mr. FOLEY. Are you referring to Mr. Bowers' report?

Mr. FIELD. To Mr. Bowers' report.

He refers at one point to a series of leaks and then leads up to a discussion of the Daniel Schorr leak. He leaves the impression that all the things he has talked about in here—let me see if I can find it—all of the pieces of information that this committee had investigated that came out in the press were the responsibility of the committee or the committee staff. Specifically he refers to an early memo which we had of the Nedzi committee where he talked of infiltration of the Executive. It is not properly classified as any kind of a leak. That was a perfectly public document which I prepared.

It says leaks of information concerning the White House. It is not a leak. It is a document I prepared for the use of the members when they went before the rules committee as to whether the Nedzi committee should be reestablished as what became the Pike committee. I prepared for them a memo which would give them the issue which I felt would justify a new investigation. It was not secret. At that time we didn't have the right to have classified information. We never got classified information. It couldn't have been a leak of classified information at that time. We didn't have it.

The leaks about the Cyprus crisis. I wish he would be more specific, but I was around the committee the entire time. I don't recall a leak about that being attributed to our committee.

Leaks regarding technical reconnaissance. That was a case where we did extensive analysis of articles, primarily of Newsweek magazine, which contained information in that area. We came up with a large percentage, around 60 percent of the information in the Newsweek article was information which we did not possess, and that we, therefore, could not have been a major source of that story. If anything, it could have been a corroboration of certain elements, but clearly there was a substantial source elsewhere. It was not the committee. The committee was never named as a source.

Leaks about alleged U.S. involvement in Iran. That story came out on the Saturday night that William Colby was fired. It was a very embarrassing story, as far as Dr. Kissinger was concerned, about his role and John Connally's role in this situation. It was my clear impression after the fact that people in the intelligence agencies were probably bitter about Mr. Colby being fired in what they may have perceived as a power struggle which Secretary Kissinger may have rigged to embarrass him. One of the pieces of evidence we circulated at that time, there was a New York Times article again by Mr. Crewdson, I believe, with that whole story in it. It quoted from

beginning to end senior intelligence officials. We had no senior intelligence officials on our committee.

The leaks concerning several alleged CIA covert operations. It is a vague charge. Then we go—and perhaps it is significant to note that Daniel Schorr was the recipient of some of these leaks. It may well have been significant because it didn't come from us and I have good evidence they didn't come from us in the early stages and if they were coming from somewhere else I would hope this committee would look in a balanced way at both sides of this.

The Pike Committee has been hurt a great deal by this general mindset that it was beset by a lot of leaks. It causes me tremendous problems. I knew the facts. I was there. The facts don't jibe with the public opinion, and I don't seem to be able to get through on that and make the point that I just don't feel those are fair charges and by innuendo tie us in with those.

We have to be specific and stick to facts on this, and evidence, and I just think to some degree the idea that we were responsible for a rash of leaks is really unfair.

Let's take the final report as it is and debate it, and I am here to answer questions on it, but to throw a lot of innuendo in with this I think is unfair. That is one thing I am quite concerned about.

Another point is some of the members of the committee—I notice Mr. McClory yesterday said security was terrible, lax, irresponsible. You know, I sort of have strange feelings that after the committee shuts down these members now have all this great knowledge and blame everything on the staff.

During the entire course of the investigation I never heard that from Mr. McClory. He was the ranking Republican member. He could have come to me at any point and said, "I think we have real problems of security. I think we ought to have a motion to direct the staff to come up with better security measures." I never heard anything from anybody.

David Treen and Dale Milford are the only two who I feel are qualified to speak to this.

Mr. SPENCE. Mr. Kasten?

Mr. FIELD. I never talked to Mr. Kasten except for the last day when he made the motion we investigate Daniel Schorr.

We worked for this committee. If they didn't like what we were doing at staff level, they had every opportunity to come in and rectify the situation. This after-the-fact criticism bothers me from the point of view of the reputation of the staff. We worked very hard on this kind of thing.

I want to reiterate I think the security at the staff level was excellent. I challenge any of you to come up with evidence that it was not. If it was not, I will admit it is not, but I think it was excellent. I think that staff did a terrific job.

I think we handled more classified information, more securely than the CIA or the FBI or those other agencies ever could. If you had sat through the discussions I had on SALT intelligence and the problems Dr. Kissinger has, it was on the wires in 12 hours.

Let's not kid ourselves about how super good the executive branch is. It is just there is nobody there to accuse them. At the staff level

our security was top flight. I just want to make that point for the record.

Mr. FOLEY. Is there any further statement you care to make in the open session?

Mr. FIELD. That is it, Mr. Foley. I appreciate your giving me that time.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5) I move we go into executive session at this time.

Mr. FOLEY. This is a motion that under the rules of the House must be determined by a rollcall vote in order to meet in executive session.

Is there any discussion on the motion?

If not, the staff director will call the role.

Mr. SWANNER. Mr. Flynt?

Mr. SWANNER. Mr. Spence?

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price?

Mr. PRICE. Aye.

Mr. SWANNER. Mr. Quillen?

Mr. SWANNER. Mr. Teague?

Mr. SWANNER. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert?

Mr. SWANNER. Mr. Quie?

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley?

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell?

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett?

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran?

Mr. COCHRAN. Aye.

Mr. SWANNER. Eight members vote aye. Four members are absent.

Mr. FOLEY. Eight members having voted aye, no members having voted no, a quorum being present, the closed session is agreed to.

We will at the conclusion of executive session return for additional public sessions of the committee. The committee will meet in executive session.

[Whereupon, at 2:55 p.m. the committee adjourned the open session.]

[At 4:15 p.m., the committee proceeded into open session.]

Mr. FOLEY. The Committee on Standards of Official Conduct will come to order.

The committee now resumes its sitting in public session.

The next witness to appear before the committee is Mr. Stanley Bach.

Mr. FOLEY. Mr. Bach, please rise.

Raise your right hand.

Mr. Bach, do you solemnly swear that the evidence you will give in the matters now under consideration will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. BACH. I do.

**TESTIMONY OF STANLEY BACH, FORMER STAFF MEMBER, SELECT
COMMITTEE ON INTELLIGENCE; ACCOMPANIED BY KENNETH L.
ADAMS, COUNSEL**

Mr. MARSHALL. Mr. Bach, will you identify yourself for the record, please?

Mr. BACH. My name is Stanley Bach and I am accompanied today by my counsel Mr. Kenneth Adams.

Mr. MARSHALL. Seated to your immediate right?

Mr. BACH. That is right.

Mr. MARSHALL. Do you wish to identify yourself further for the record, counsel?

Mr. ADAMS. I am with the firm of Dickstein, Shapiro & Morin here in Washington.

Mr. MARSHALL. Mr. Bach, what is your present address?

Mr. BACH. 527-A Second Street NE., in Washington.

Mr. MARSHALL. Are you presently employed?

Mr. BACH. Yes, I am.

Mr. MARSHALL. What are your present duties?

Mr. BACH. I am an analyst for the Congressional Research Service of the Library of Congress.

Mr. MARSHALL. Did you go to those duties from your duties with the Select Committee on Intelligence?

Mr. BACH. No, sir, I did not.

Mr. MARSHALL. What did you do in the intervening period?

Mr. BACH. I was a consultant with the National Academy of Sciences.

Mr. MARSHALL. Was that the only intervening employment?

Mr. BACH. Yes, sir.

Mr. MARSHALL. Prior to the hearing, you received copies of House Resolutions 1042 and 1054 as well as rules of this committee and investigative procedures adopted by this committee and a copy of Chairman Flynt's opening statement, have you not, sir?

Mr. BACH. That is correct.

Mr. MARSHALL. Do you have a prepared statement which you wish to file with the committee at this time?

Mr. BACH. No, I do not.

Mr. MARSHALL. Do you have any oral statement which you care to make to the committee at this time?

Mr. BACH. No, sir.

Mr. MARSHALL. Have you produced to the committee all documents which you were subpoenaed and requested to bring?

Mr. BACH. Yes, I have.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or should it involve classified information, any information which may tend to defame, degrade, or incriminate any person, please advise this committee in a timely fashion so that it can take appropriate action under the Rules of the House of Representatives.

Mr. BACH. I shall.

Mr. MARSHALL. Mr. Bach, what were your duties with the Select Committee on Intelligence?

Mr. BACH. Mr. Marshall, I had three primary responsibilities. First: I was assigned to prepare briefing materials for the members of the committee on a series of issues on which the committee might decide to make recommendations.

Second: I was assigned the responsibility to prepare a preliminary partial draft of a final report.

Third: I had supervisory responsibility for the preparation and publication of the committee's public meetings and hearings.

Mr. MARSHALL. When you say "preliminary, partial draft of the final report"——

Mr. BACH. Yes.

Mr. MARSHALL [continuing]. Could you describe a little further what that means within the context that the testimony thus far that has been produced has referred to the January 19, 1976, draft——

Mr. BACH. Yes.

Mr. MARSHALL [continuing]. As being the first complete draft of the committee report?

Mr. BACH. Mr. Marshall, I am referring to a wholly different document. Beginning in October, I believe, until mid-December, with the assistance of several other members of the staff, I prepared a draft of what I anticipated might become the working draft for the committee. It was a partial draft because it did not include any material on a number of subjects the committee had investigated.

That draft was submitted to the staff director and the general counsel in mid-December, and it was essentially discarded. There is essentially no overlap between the draft I prepared and the draft that was submitted to the members of the committee on January 19.

Mr. MARSHALL. At any time did it come to your attention that there were leaks occurring with regard to information which the committee had available?

Mr. BACH. I certainly became aware of newspaper articles and radio and television accounts of executive sessions the committee had had, and of material which the committee had received.

Mr. MARSHALL. Did you recognize any part of your preliminary, partial draft in any of those news accounts or TV broadcasts?

Mr. BACH. No, sir.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report or a draft of the report on January 25, 1976.

Did you give this report or a draft of the report or the text of any part of the draft to Mr. Schorr or to any other person?

Mr. BACH. I did not.

Mr. MARSHALL. Do you know anyone who did?

Mr. BACH. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or any draft of that report?

Mr. BACH. No; I do not.

Mr. MARSHALL. Or partial publication of the text of that report?

Mr. BACH. No.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. BACH. No; I do not.

Mr. MARSHALL. Did you give the report or make any part of the select committee's report available to anyone outside of the Select Committee on Intelligence?

Mr. BACH. No, sir.

Mr. MARSHALL. Or any part of that report?

Mr. BACH. No, sir, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BACH. I do not.

Mr. FOLEY. Mr. Bennett?

Mr. BENNETT. I take it you had a different type of draft.

What was the nature of your draft? How did it differ from the final report?

Mr. BACH. Mr. Bennett, I think that the subjects I covered in the draft that I prepared—well, I should amend that. I didn't write every word myself. I worked with several other people on the staff in doing it. I think that it covered essentially the same subjects that appeared in the report which the committee ultimately adopted. The difference was primarily one of organization, structure, and, in some respects, content, but the basic coverage of the two documents I think was essentially similar.

Mr. BENNETT. I don't have any further questions.

Mr. FOLEY. Mr. Spence?

Mr. SPENCE. I don't have any questions.

Mr. FOLEY. Mr. Hutchinson?

Mr. HUTCHINSON. You were in charge of preparing more or less of an ongoing, preliminary draft for the use of the committee, at least that is what you conceived it would be, and as I understand it, you kept at that until when, December?

Mr. BACH. Until mid-December.

Mr. HUTCHINSON. And then your effort was just totally scrapped; is that right?

Mr. BACH. Mr. Hutchinson, I submitted that draft to my superiors on the staff, to the staff director, and the general counsel. That was not the draft which became the working document that they worked from and which the committee subsequently worked from.

Mr. HUTCHINSON. And did they tell you why they were rejecting it?

Mr. BACH. No, sir.

Mr. HUTCHINSON. So far as you know, it never did reach the committee itself.

Mr. BACH. To the best of my knowledge, none of the members of the committee saw that draft.

Mr. HUTCHINSON. So that your efforts, which covered several months, were completely scrapped, and then they started from scratch, and in the matter of 2 or 3 weeks had to write an altogether different version; is that right?

Mr. BACH. Well, a good deal of the information, and I think the background research, which went into the preparation of my draft and the briefing materials which I prepared for the members laid the groundwork for the report which was eventually written.

Mr. HUTCHINSON. So that your briefing efforts were not in vain, although your drafting efforts were; is that it?

Mr. BACH. The briefing materials, Mr. Hutchinson, were distributed to the members of the committee in preparation for the meetings which the committee held in early February on recommendations. I have reason to believe that in some instances that material did prove of value of the committee members.

Mr. HUTCHINSON. I have no further questions.

Mr. FOLEY. Mr. Quie?

Mr. QUIE. You are talking about early February 1976?

Mr. BACH. Yes, sir, that is correct. I believe that is the right time. You will recall that the resolution which the House adopted did extend the life of the committee briefly, in order to permit time for the committee to deliberate on recommendations, and it did ultimately submit a public report on recommendations. I believe those meetings occurred during the first week of February.

Mr. QUIE. Thank you. That is all.

Mr. FOLEY. Mr. Mitchell?

Mr. MITCHELL. Were there substantive differences in the two versions? Was there a lot of new material added, for example, that did not appear in your draft?

Mr. BACH. Yes, sir, there was, Mr. Mitchell. I didn't consider myself well enough informed on a number of the issues which the committee had investigated to even attempt a pretense of trying to prepare a full report on them, so when I indicated earlier that it was a partial draft, I stopped my work at the point at which I thought I was no longer competent to proceed. The final report ultimately did cover the subjects in my draft and the others which I didn't attempt.

Mr. MITCHELL. Mr. Bach, was there a considerable difference in the thrust of the new report as compared to the one you prepared? Did the new report seem to be trying to prove a point that you hadn't directed your report toward?

Mr. BACH. Frankly, Mr. Mitchell, I would find it extraordinarily difficult to try to characterize either document very briefly or compare them.

Mr. MITCHELL. The final report, the essence of it, was compatible with what you had prepared before. There weren't any material differences, in the material that you knew something about and the version you prepared, that just a lot of it was eliminated.

Mr. BACH. Oh, I think undoubtedly there were differences in the way certain subjects were handled as there would inevitably be if two different people try to draft a report on the same subject.

Mr. MITCHELL. Was the thought initially, Mr. Bach, that your draft would play a very major role in the final draft, that it would probably be the final draft with minor alternations, or wasn't that the game plan from the beginning?

Mr. BACH. That is a question which I am not really in the best position to answer. I was asked to prepare this material with the assistance of several other people on the staff, which I did. What the expectations of the staff director and general counsel and the chairman were, I really can't say.

Mr. MITCHELL. Thank you, Mr. Bach.

I have no further questions.

Mr. FOLEY. Mr. Cochran?

Mr. COCHRAN. I have no questions, Mr. Chairman.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5) of the House, I move we go into executive session at this time.

Mr. FOLEY. This is a motion that requires a rollcall vote of the committee in open session.

Is there any discussion?

If not, the staff director will call the roll.

Mr. SWANNER. Mr. Flynt?

Mr. SWANNER. Mr. Spence?

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price?

Mr. SWANNER. Mr. Quillen?

Mr. SWANNER. Mr. Teague?

Mr. SWANNER. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert?

Mr. SWANNER. Mr. Quie?

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley?

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell?

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett?

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran?

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, seven members vote aye, five members absent not voting.

Mr. FOLEY. There being seven members voting aye, five members absent and not voting, the motion is agreed to, a quorum being present.

At this time because the Chair anticipates that the executive session will be a very brief one, I wonder if we could ask all but the witness' counsel, please, and members of the committee staff and the reporter to accommodate the committee by leaving the committee room briefly.

[Whereupon, at 4:28 p.m., the committee proceeded into executive session.]

[At 4:44 p.m., the committee proceeded into open session.]

Mr. FOLEY. Are there any further questions of Mr. Bach?

If not, Mr. Bach, you are excused with the appreciation of the committee for your appearance before the committee and your assistance in its investigation.

The committee has concluded its hearings for today.

Mr. Bach, you are also formally released from your subpoena.

Mr. BACH. Thank you.

Mr. FOLEY. This concludes the hearings for today.

The committee will stand adjourned to meet at 10 a.m., Monday.

[Whereupon, at 4:45 p.m., the committee was adjourned, to reconvene at 10 a.m., Monday, July 26, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

MONDAY, JULY 26, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, Miss Jan Loughry, staff members; Robert Carr, associate counsel.

Mr. FLYNT. The committee will come to order.

A quorum is present for the purpose of taking testimony and hearing evidence.

The first witness before the committee today is our colleague from Connecticut, Hon. Robert N. Giaimo.

Mr. Giaimo, will you please raise your right hand?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. GIAIMO. I do.

TESTIMONY OF HON. ROBERT N. GIAIMO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. FLYNT. Mr. Giaimo, do you have a statement which you wish to make?

Mr. GIAIMO. No, sir.

Mr. FLYNT. Do you have any documents which you would wish to present to the committee in addition to what you have already given to us?

Mr. GIAIMO. No. I submitted to you and to the committee the totality of the documents which I had. I did not bring them along with me today because they were returned to me, and I didn't think you wanted them.

Mr. FLYNT. They were returned to you. And if we need them, I assume we can, of course, have them back?

Mr. GIAIMO. Yes, sir.

Mr. FLYNT. We thank you for your appearance before the committee and for making the documents available to us.

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Mr. Marshall.

Mr. MARSHALL. Mr. Giaimo, prior to the hearing you have received copies of House Resolutions 1042 and 1054, as well as copies of the rules of this committee, copies of the investigative procedures and the chairman's opening statement; is that not correct, sir?

Mr. GIAIMO. Yes, sir.

Mr. MARSHALL. Mr. Giaimo, in the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence, or classified information, or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take timely and appropriate action under the Rules of the House of Representatives.

Mr. Giaimo, you were a member of the select committee, is that correct?

Mr. GIAIMO. Yes, sir.

Mr. MARSHALL. Was this from the very beginning of the committee?

Mr. GIAIMO. Yes, sir. I, in fact, was the author of the resolution, you will recall, which set up the committee. I was the author of that by virtue of the fact that I was on the steering committee—Steering and Policy Committee of the Democratic Majority, which recommended the establishment of this committee. So I handled that legislation for the Steering Committee through the floor.

Mr. MARSHALL. And when you say you were the author of the legislation setting up the committee, was this the original resolution?

Mr. GIAIMO. Yes, the original resolution which set up the committee, which we can refer to as the Nedzi Committee.

Mr. MARSHALL. Did you have anything to do with House Resolution 591, which was a subsequent resolution, also involving the committee?

Mr. GIAIMO. Well, I don't recall clearly now what my role in it was. Certainly I was very much involved in it. You mean in the reconstitution of the committee.

Mr. MARSHALL. Yes, sir, that is correct.

Mr. GIAIMO. Well, I certainly was very much involved in all of the dealings that went on there, and negotiations. But formally, I do not recall what role I played on the floor. I do not think—I just don't recall that I directly handled anything on that.

Mr. MARSHALL. Now, you, of course, as a member of the select committee, were aware that the committee had adopted certain rules and regulations governing the handling of classified information and classified documents containing classified information?

Mr. GIAIMO. Yes, and I helped to draft those rules.

Mr. MARSHALL. Judging by your experience as a member of the select committee, could you give this committee the benefit of your views as to whether those rules and regulations were followed by the select committee members, and by the select committee staff?

Mr. GIAIMO. What you are asking me is, in my opinion, whether or not we followed the rules protecting classified documents?

Mr. MARSHALL. Yes, that is right. And the classified information in those documents.

Mr. GIAIMO. And classified information in those documents.

Mr. MARSHALL. Just by way of explanation, some witnesses have made a distinction or apparent distinction between handling of the

documents themselves and handling the classified information in those documents, and I thought I might point that out to you.

Mr. GIAIMO. I was going to make the same distinction, because if you are referring to the handling of classified information, of which there was a great deal of classified information that was sent to the committee, and which was worked on by the staff, and seen by some of the members, I do not have any evidence that that was handled improperly or with lack of concern for security.

So that in my opinion, I would have to say I do not know of anything which endangered security. I understand that almost all if not all of it was returned. In fact, as you recall, and was testified to by Chairman Pike, when the CIA, I believe, indicated that much of the classified information was missing, it was later found to be in their possession. So to my knowledge, I don't know that there was any carelessness or lack of concern for classified information.

Now, insofar as the document was concerned, the document being our report, again, I do not know that that was handled in any way which was less than prudent or careful. But I do want to stress this difference. And I am a good example of this. That in dealing with that committee report, and in handling that committee report, at no time did I feel that I was dealing with a classified document. And therefore, we treated it as a working paper. We carried it, right in this very room in fact—it was presented to us in this room, we worked on it, we amended and changed it. And it was not a classified document. In fact, it was a document which we had every intention of publishing. And as you know, it was only until that last week when we were forbidden and prohibited by the House, that then we clearly abided, and I did, by the will of the House, and felt that this is a document which cannot be published. Now, at all times I personally had my own copy, and the times when I had it I secured it in my own security system, which is my safe.

Mr. FLYNT. Do you think it was either appropriate or proper for it to be given to the news media prior to filing with the House?

Mr. GIAIMO. No, no, sir. I do not think so. But, of course, I do not think—I think that would be inappropriate to give it to the news media in any event, whether it was a classified—well, certainly if it were a classified document, it would be inappropriate to give it to the news media. But even if it were not, even if it had nothing in it which endangered security, it would have violated our rule of prior release.

Mr. FLYNT. And also the executive session rules.

Mr. GIAIMO. And also the executive session rules of the committee. So that, no, it should not have been released. And I have to reiterate what I heard here in testimony the other day, that the release of it, in my opinion, injured the very serious and important work of this committee.

Mr. MARSHALL. How did that injure the work of the committee?

Mr. GIAIMO. Because I think what happened as a result of the release of the report to Daniel Schorr, whether it was done by whomsoever—and I have no idea whether it was the Congress that did it, or Congressmen, or staff members, or the executive branch—the fact is in my opinion that, you know, whenever something like this happens, in the law, we ask who benefits, and I certainly don't

think that Congress benefited from the Schorr release. I think what happened was it impeded a job which I think must be done, and that is to reestablish adequate and proper oversight over the intelligence community. And the release of this document created an atmosphere, both in Congress and in the public, that Congress cannot be trusted to properly have access to secret and classified activities. Now, this is a very dangerous, very dangerous position to be put into. I am hoping that we are going to evolve and work out of this. We already have to agree, as you know. The Senate has established an independent oversight committee. I am hopeful that the House is going to see the wisdom of this, and if not this year, certainly next year, and certainly with the recommendations from this committee, and also the recommendations from the select committee which you know were made in a part of that report, and also the interest that I know exists in the Rules Committee in this area, I am hopeful that the House will follow the route of the Senate and establish an intelligence community, oversight committee. I think it is very essential, because I have witnessed for some years now, and this was the reason for my interest in becoming a member of this select committee—I have witnessed the danger that can come about from excessive secretness in Government. And it concerns me.

The chairman and I serve on the Defense Subcommittee of Appropriations together, where we are privy to a great deal of information. And I have great concern that we have allowed over the last 25 years secretness in Government to become the reason for its own existence, and it poses a danger to the American people, which is of concern to me. We have seen this in recent years. We saw it when I was told by people in the executive branch that we were not conducting a secret war in Cambodia, and in fact we were.

That is of great concern to me. The Angola situation—and many of the other incidents which are in our report, which do not jeopardize national security, but which the American should know their Government has done, and which in my opinion the Government did unwisely.

Now, we have got to reestablish this kind of congressional control over secret intelligence agencies.

Mr. FLYNT. I would like to ask a question at that point. Now, of course, the Central Intelligence Agency has a variety of roles and missions. There is some question as to whether all of those roles and missions are clearly defined in the charter of the CIA.

Mr. GIAIMO. True.

Mr. FLYNT. Now, on the question of the espionage activities engaged in by the CIA, which many people believe was the original basis for the establishment of that agency as the focal point of organized intelligence activities of the United States—now, as to the espionage activities carried on by the CIA—and let me, if I may—preface that question by saying this: Espionage is a dirty business. There is no way that I know of to clean it up. Persons who engage in it recognize that their lives are laid on the line when they enter into it. Now, as regards the espionage portion of the intelligence gathering capability of the CIA, do you feel that those activities should be made public?

Mr. GIAIMO. No way, no, sir.

Mr. FLYNT. Now, would you elaborate?

Mr. GLAIMO. We have no disagreement, Mr. Chairman. Let me just back up and say I have a great deal of respect for the CIA. I think they have done an excellent job. I also think that the former Director, who was the one that we dealt with in most instances, Mr. Colby, was an outstanding Director of the Central Intelligence Agency. But this predates Mr. Colby, and it goes back over many years. It goes back to the days of Mr. Helms, it goes back before that, it goes back to the Cuban situation, the Bay of Pigs, and even before that. And you recall obviously from your statement the difficulty when the Central Intelligence Agency was set up in the days of Harry Truman, when they were given a mission, but then there was that catchall phrase which broadened the mission. I have absolutely no objection, in fact, I recognize the necessity for an intelligence function. I even go beyond that to the counterintelligence function, and all that that involves. That isn't the problem.

Any nation in the world today must have that capability. And we have it, and we must make certain that it is a good capability. And I think the CIA which handles not only CIA functions—but the head of it acts as the Director for Central Intelligence for all of the Agency's functions as well.

I think where we began to get in trouble was not in intelligence gathering, or in counterintelligence, but in covert actions.

Now, what are covert actions? Covert actions are implementing secretly policies of the United States of a political or paramilitary nature covertly. There may be occasions when they are justified, and have to be used, mostly in a wartime period, in my opinion. And there is no problem with them in wartime. It happens in peacetime, over the last 20 years, if you will watch the growth of covert actions, you will find that in fact, what the United States began to do was to do covertly what it no longer wished to do openly, and it began to interfere covertly in the activities, political activities, in other countries. This is a dangerous road. And more than that, it is secret government.

Let me just give you one clear example from recent days.

The question of U.S. involvement in Angola, just this past year. Perhaps we should have been involved in Angola, perhaps we should not have been involved. But the question of whether the United States should be involved in Angola is one of government policy, which the American people should know about and be able to ratify or disaffirm, so that the Government would at least know how its people felt about an involvement in another country.

Now, if we do that openly, our involvement in Angola, then the people know, and they can react as they reacted for example and indicated their displeasure with our involvement in Southeast Asia. But if these things are done in secret—and I am not going to state here whether in fact they were done or not, although I think it is quite well known as to what our role in Angola was—if these things are done in secret, then the American people cannot ratify or disaffirm because they do not know what their Government is doing. That would be a covert action. And that is dangerous, and I think wrong.

Mr. FLYNT. Now, are you saying that the United States should not participate in the Angolan situation—period?

Mr. GIAIMO. I am saying that if the United States wanted to involve itself in the Angolan situation, it should do so openly, so that its people know what it is doing, and therefore the people can affirm or disaffirm what the U.S. Government is doing.

Mr. FLYNT. All right.

Now, getting back—

Mr. GIAIMO. The same with other countries in Europe.

Mr. FLYNT. Getting back to the intelligence gathering mission, the espionage mission which we discussed a moment ago, did you gain the impression that there were members of the staff of the select committee who felt that they wanted to disclose the espionage activities of the United States?

Mr. GIAIMO. No, sir. In fact, I think all in all the committee and the report was very careful—I recall from some of the changes which we made—of course, you have been told how we went over the report, and the changes with CIA, and they make recommendations for changes, and so forth—I recall that we tried to be careful to make certain that intelligence operations were not jeopardized. I could even give you a specific example which I couldn't do in open session. But in closed session, you have probably been told about it, where we took particular steps to change the report to protect the source of information.

But you know, a lot of loose talk came in about those days. People, for example, indicated, some Members indicated—not members of the committee, but Members of Congress, when we had the debate on the floor, that names of agents, for example, were involved. Well, of course not. And certainly I would have objected violently, as all would have, to that type of disclosure. And that was not involved.

Mr. FLYNT. Mr. Marshall.

Mr. MARSHALL. Mr. Giaimo, you stated that you viewed the working draft of the select committee's report as a working paper, and that there was thought that this was going to be made public at some future date.

Mr. GIAIMO. Yes.

In other words, it was not a classified document.

Mr. MARSHALL. Was there any classified information in the select committee's draft of its report, either the January 19 draft or as modified and changed as it wound up in the January 23 draft?

Mr. GIAIMO. I suppose that there was. I have great difficulty with this question of what is classified and what is not because, you know—in other words, if this is a classified document, and this is put in verbatim, then yes. But what about the information which I gleaned from reading classified information. I believe it has been testified by our chairman that there was classified information—you can correct me if I am wrong. But I think it was information that we as a committee overwhelmingly decided should be made public, and that it did not and would not jeopardize the national security.

Mr. MARSHALL. Did you think that the reasons underlying the original classification of the information were adequately made aware to the committee so that it could reach a decision that was fully informed before the declassified information?

Mr. GIAIMO. I believe they were, to the best that you can ever accomplish that task, and that would be, you know, to go into the reasons why thousands of documents were originally classified substantially, yes—in every case, no.

Mr. MARSHALL. Now, where were you, sir, when you received your draft of January 19, 1976?

Mr. GIAIMO. Was the 19th that Friday?

Mr. MARSHALL. The 19th was on a Monday.

Mr. GIAIMO. All right. That was the Monday of the last week that we met. And we wrapped it up Friday. And then we met again the following Monday, didn't we?

Mr. MARSHALL. All right. January 19 was Monday.

Mr. GIAIMO. What was the date we went to the Rules Committee? Was that the next day, or a week later?

Mr. MARSHALL. No, sir; that was a week later, I believe.

Mr. GIAIMO. OK. So the 19th was the last week of our markup, and we met in here every day from the 19th to that Friday, which was the 23d.

Mr. MARSHALL. Yes, sir.

Mr. GIAIMO. All right.

Where was I when I received my draft on the 19th?

Mr. MARSHALL. Yes.

Mr. GIAIMO. I—

Mr. MARSHALL. What I am trying to get at was how was the original draft distributed to the select committee? Was it delivered personally to you—to the members of the select committee? Was it delivered personally to you?

Mr. GIAIMO. Yes. The reason I am hesitating is because there was one instance where the draft was delivered to me personally in my office by a committee member. I am not sure that that was on the 19th. I think it was, because from then on, I had possession of the draft, and came here each day and carried it with me, and would leave it here, rather, and they would make the changes that we had agreed on that day, and it would be presented to me the following morning here.

Mr. MARSHALL. What about the draft of January 23, which was the final draft?

Mr. GIAIMO. The final draft. My recollection is that I carried that final draft back to the office with me, and kept it from then on, and I am not so sure that I got some of the latest changes that were put into it as a result. But they were—I don't recall the nature of those changes. But I think I kept—in fact, I know I kept the draft on the 23d.

Mr. MARSHALL. Mr. Giaimo, the reason I am asking the question is we are trying to trace the location of each of the drafts and any changes to determine if there was careless handling of the drafts or information which was classified.

Mr. GIAIMO. My recollection is that on the 23d, which was the Friday, and the last day that we marked up, that I took the draft back to my office.

Mr. MARSHALL. Now, Mr. Daniel Schorr stated in an article in the Rolling Stone, on April 8, 1976, that he had possession of a draft of the select committee's report on January 25, 1976. Now, did you give this report or a draft of the report to Mr. Schorr or to any other person?

Mr. GIAIMO. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. GIAIMO. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or draft or any

part thereof—that is the publication to unauthorized persons, such as the media, or outside the committee?

Mr. GIAIMO. No.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. GIAIMO. No; I do not.

Mr. MARSHALL. Did you give the report—

Mr. GIAIMO. Except I read in the last few days that a copy of the report was given to the CIA by one of the members of the committee.

Mr. MARSHALL. Did you give the report or a draft of the select committee's report or make any part of the select committee's report available to anyone outside of the Select Committee on Intelligence?

Mr. GIAIMO. No, I did not. The reason I hesitate there is that I think I have told your investigators that I had a discussion about portions of the draft with a member of the executive branch, an Ambassador, who had access to information in the report, had access to the report, obviously from the CIA, and we did discuss some of the points that he thought might be injurious, and we subsequently changed the report to take care of those concerns.

Mr. MARSHALL. Was this discussion taking place prior to the January 23 report?

Mr. GIAIMO. Yes, yes, because we incorporated those changes into the report, either on the 23d—I think it was the 23d—either the 23d or the 22d. But it was that week that I discussed this with him.

Mr. MARSHALL. Let me ask you this: Did you read the Village Voice version of the report?

Mr. GIAIMO. I scanned it. I took a quick look at it. But quite honestly, I didn't read the whole thing. And more importantly, I did not read it with a comparison to try to—it was just too much of a job.

Mr. MARSHALL. Directing your attention to the discussions you had, that you have just described about a part of the report that was finally changed in the January 23 draft, do you remember whether the Village Voice contained the draft as originally put out before your discussions with the Ambassador, or whether those changes were in it?

Mr. GIAIMO. No, I do not recall. But that would be easy to check.

Mr. MARSHALL. Would it be possible for that to be checked, sir, outside of these hearings, and to ask you, since you were the only one privy to those discussions, to advise this committee?

Mr. GIAIMO. Sure. I do not have a copy of the Village Voice, but you do.

Mr. MARSHALL. We have a copy or two around here.

Mr. GIAIMO. As a matter of fact, the report that I turned over to you had some of the information, some additional papers, which were given to me by CIA, which listed some of the objections, and if we went through those, I think we could see where the changes were made. I recall one of the changes made reference to a country which we deleted.

Yes, we could follow that through.

Mr. MARSHALL. If you have just a few moments, and if you would be willing to confer with a member of our staff, we would like to check that out.

Mr. GIAIMO. Yes.

Mr. MARSHALL. Finally—

Mr. MITCHELL. Will counsel yield? I was thinking over the weekend that no one has been able to identify the Village Voice copy with any

other copies that were in existence. And one of the reasons was because two pages were missing. I think it would be a very simple thing to remove two pages from any kind of a document. Could we make a comparison with the Village Voice version—assuming that two pages were not missing, and then compare it with existing documents. I think that might prove very fruitful.

Mr. MARSHALL. We have that comparison.

Mr. MITCHELL. Thank you.

Mr. MARSHALL. Finally, did you give the report—excuse me.

Do you know of anyone who made the report of the select committee or a draft of the report before the select committee available to someone outside of the Select Committee on Intelligence?

Mr. GIAIMO. Do I know of anyone who did? No, I don't. Well, copies of the report were obviously available to people in the executive branch.

Mr. MARSHALL. The CIA and so forth, as has been testified.

Mr. GIAIMO. No question. I cannot prove who did it, but I felt confident, as we were going along, that some of our colleagues certainly were in close communication with people in the executive branch.

Mr. MARSHALL. My question really refers to communications outside of the exchange that may have been going on between the executive branch and the Select Committee on Intelligence as to what should be published, what changes should be made, things beyond those communications, or in addition to those communications.

Mr. GIAIMO. No, I do not, except as I said earlier, that I think—the publication of this information injured the committee and the committee's work. No question about it in my mind.

Mr. FLYNT, Mr. Price.

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. Yes, Mr. Chairman.

Mr. GIAIMO, talking about Angola a little bit earlier—

Mr. GIAIMO. Yes, sir.

Mr. SPENCE. As to whether or not we should have been involved, I think you said in any event, it should be done in public, so the people could affirm or ratify the action. Aside from whether we should or should not have been involved, do you think we have time, Congress has time, or the Executive has time, to debate before the American people, and just how would they ratify it?

Mr. GIAIMO. Well, of course the question you are asking me goes to the very roots of government. And it is to that issue that I give greater concern than I do to anything else. Our Founding Fathers cautioned us about an all-powerful government. We Americans, in our trusting way, seem to have at times forgotten that lesson, and we seem to encourage all-powerful governments, and we only have to look back less than a decade to see the threats which could come about from an all-powerful government.

Now, we have got to take steps at all times to protect ourselves against this. And this is the reason why I insist the Congress must know what is going on in secret in Government, because otherwise how can we protest, how can we say stop? And the Angola situation would make a perfect case. You say there might not be time to have a debate. The alternative, then, is that the people know nothing,

and Government decides what course of policy we shall engage in as a nation. And that, to me, is the end of democracy.

Now, if you have agencies that can do that, and if you encourage them. I assume our history teaches us that it will be but a short time before those secret involvements take place in a Chile, in an Angola, in a Cambodia, in a Bangladesh, or where have you, and before you know it, they will begin to take place in New York, in Chicago, in New Haven, Conn., or elsewhere. And that scares the living daylights out of me. This is why I believe that any secret agency has to be held on an extremely short, tight leash.

Mr. SPENCE. You are talking about all-powerful government. And I share your concern. But we talk about the Executive being all-powerful, or could we also be talking about Congress? What is all-powerful government?

Mr. GIAIMO. All right. You know, I wish that I could worry about the all-powerfulness of Congress, but quite frankly, I don't think you have to worry about that at all. Congress, if anything, lacks power. So I just don't think that you have to worry about an all-powerful Congress. The last time Congress was all-powerful was in the days of Thaddeus Stevens, I think, and ever since then it hasn't been, and look at the mess it got into then. But today you have to worry about an all-powerful Executive. And certainly in the 18 years I have been down here, I have seen all-powerful Executives, and it concerns me.

Mr. SPENCE. Well, it is debatable—the people in the public, when they think of all-powerful government, most of them are thinking, I think, about regulations, rules, laws, taxes passed and all the rest. That is what I get complaints about.

Mr. GIAIMO. That is true.

Mr. SPENCE. Getting back to Angola, as a matter of fact, didn't we do just as you suggested? We did take it out into the public, and didn't Congress then overrule what the Executive did?

Mr. GIAIMO. But do you know that we only did that because there was a leak of American involvement in Angola? There was a leak. There has never even been an admission to this date as to whether or not the United States was involved that I know of. But there was a leak, and it was that leak which stimulated Congress. I was part of that activity. I recall it well. It was only that leak which stimulated Congress to say no more.

Mr. SPENCE. In any event, rightly or wrongly, that action on the part of Congress is given as the reason why Angola went Communist.

Mr. GIAIMO. Oh, well, that is not so at all. I don't know the reason why Angola went Communist. I am not even certain that Angola has gone Communist. I do not know what they have gone over there. We have three tribes fighting each other.

But that isn't the point. The opposite of that would be we should have become involved in order that Angola not become Communist. Now, even if we should, maybe we should have been in Angola. The point is who decides whether we should be in Angola, Henry Kissinger, or the American people.

Mr. SPENCE. How could the American people decide?

Mr. GIAIMO. How can they decide if they don't know the facts, and if they are not informed?

Mr. SPENCE. Do you have a big town meeting of everybody in the country and debate it?

Mr. GIAIMO. That is what our Founding Fathers said. Our Founding Fathers did not say that the Committee of Forty, and the President, and a few other people, should quietly sit in a room and decide we are going into Cambodia, we are going into Laos, we are going to go into Angola, or elsewhere? That is not the Government that I have learned about and serve.

Mr. SPENCE. Well, there again, it is debatable as to who should conduct foreign policy, whether the Congress as a whole, the American people as a whole, or the Executive, and how much everybody can be in on the conduct of foreign policy.

Mr. GIAIMO. I do not think it is debatable that foreign policy should be conducted in secret, and that American foreign policy should be kept a secret from its people, and from their representatives in Congress. I do not think it was right when the Secretary of Defense or of the Air Force—I think it was of the Air Force, told us, in a committee some years ago, that we are not bombing in Cambodia, and involved there, when in fact we were. Now, once you go down that road in government, you do not have democracy. And you cannot justify this under the cover of expediency, or quickness. You say, can you have a town meeting? Yes, you have a town meeting. If you want to see the greatest town meeting we have had in my lifetime, it was the town meeting that took years as to what we should be doing and should not do in South-east Asia. That was a town meeting.

Mr. SPENCE. Over a long period of time.

Mr. GIAIMO. And I come from a State which was the daddy of town meetings up in New England. We still have them in fact.

Mr. SPENCE. That is all I have.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. I am certainly inclined to agree with the thrust of your testimony, that covert operations should be kept at a minimum. I am even openminded to the idea that possibly they should be prohibited. I have some worry about the way in which the report was handled, as if, since secret information was involved in it, a committee of Congress, or a majority of members of Congress—of a committee of Congress—should have presented Congress with a situation of having to close up and not publish a report which they had not read. But that is history, and Lord knows, I have made my share of mistakes. And I do feel there was some sort of a mistake made in that type of presentation.

But I understand your principal thrust. And I must say I agree with your principal thrust. And I am a member of the CIA Committee. And I have been a member of the CIA Committee for many years. I was not a member for a while, not because I did not want to be on it but I was sort of a thorn in the side of a lot of people then, by being critical of what I thought indicated intervention in foreign affairs in a secret manner that was damaging to our country.

Now that I have been put back on the committee by the elections last year, I pursued that same type of criticism. I wish that I had a firm, hard definitive answer as to whether there ever ought to be covert operations.

My guess is this country has suffered more from covert operations than they have ever gained by it. And they are not new. As a matter of fact, there was a secret meeting of Congress in the early 1800's which was designed to take over Florida. U.S. troops were sent down in the early 1800's. It was a fiasco. In fact, the most prominent book on this subject is called "The Florida Fiasco," written by Rembert Patrick.

I just don't have very many illustrations in my knowledge—and I am a student of history—that indicate that covert operations by our country have been beneficial. And I think somebody ought to make a study of it, and see if any of them ever have been. I doubt if they ever have been.

Thank you very much for your contribution.

Mr. GIAIMO. If I may just comment, I agree with you, Mr. Bennett, and I know you are a student of history, and concerned about the excessive powers of Government. I am troubled, like you are. I haven't decided in my own mind whether we should eliminate all covert activities, because I can foresee, I said earlier, certainly in wartime—but that is not really a good test, because in wartime we do many, many things which we are prohibited from doing in peacetime. But even in peacetime it is conceivable that there may be some emergency situations where we must perform a covert action. And perhaps we should. But in most instances, I don't think they have been successful. In most instances they have deterred America from the great role which America had in its relations with other countries. In that we dealt from a moral base. This was always our strength. Now we have lost that in recent years. I think it is a mistake. And, therefore, they look at us, you know, in other countries, the emerging radical groups, if you will—but these are the emerging groups in Latin American countries, and in some European countries—take a look at Italy, about which I know a great deal. The first thing they think of when they think of the United States, is CIA, and covert actions. This isn't serving our cause or our purpose, and we ought to really reanalyze it.

Now the difficulty is when you make it easy to do, when you institutionalize covert actions as we have, then you are giving an easy weapon to an all-powerful Executive. And that is what I think is dangerous, and can get us into trouble, and can jeopardize our liberties. That is my concern.

Mr. BENNETT. I have no further questions.

Mr. FLYNT. Mr. Quillen.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. Giaimo, if secret operations of our intelligence agencies were made known to committees of the Congress, don't you think the same thing would happen as happened in the deliberations of the Select Committee on Intelligence, that there would be leaks?

Mr. GIAIMO. Well, I don't know that they came from the committee.

Mr. QUILLEN. I am not saying they did, either. But at the same time, when information is known generally, there tend to be leaks.

Mr. GIAIMO. Yes. But, you know, we are talking about a great big Government here, and we are concerned about the leaks which can come about from some number of Congressmen, or Senators, 435; and 100. But you know, there are many thousands in the executive branch who

have access to this information. And I do not place a greater reliability or trust on someone because he works in the executive branch than I do on one who works in the Congress, and who is a Member of Congress.

The answer, I think, is yes, it is difficult. But the alternative is that Congress does not know of the secret workings of Government. And to me that is more dangerous than the fact that a secret bit of information got out.

Now, you have got a balancing problem here. All of this involves a very serious balance. One is the need for secrecy by Government, in its intelligence functions, which are, as I said to the Chairman—valid and necessary. There is a need for secrecy in many of Government's acts. But you do have to balance that with how does this secrecy jeopardize the rights and privileges of the American people. And we have seen, just in the last few years, that those rights have been jeopardized, and infringed upon.

So you have to have that balance. And the only way I can see that you are going to have some control is for Congress to know now.

Now, congressional committees have been privy to a lot of this information. I serve on an Appropriations Committee of Defense, which is privy to almost all of this information, all of it. You gentlemen serve on—many of you—on committees that are privy to this information. I don't know of any leaks. And I haven't witnessed leaks over the years from either the Armed Services Committee or the Appropriations Committee. We have this leak of a report, not a classified document, but a report, and even that I do not know who leaked it. It could be the committee, it could have been the executive branch—I don't know. But I think you have to run that risk.

Now, on the other hand, I have witnessed many, many, many leaks in my 18 years in Congress, and most of them have come from the executive branch, and most of them have come from Cabinet members in the executive branch.

When they do it, of course, it is not a leak—it is an accepted mode of informing the public, and not doing it directly. Now, we all know that has been done, and it has been done by every Secretary of State since I can remember. And in fact, when they do it, you see, it becomes a declassification, an automatic declassification.

Mr. QUILLEN. I think what we are really finding here, not only today, but during these hearings, that other committees have strict regulations as to the handling of classified material, whereas maybe the Select Committee on Intelligence handled it loosely.

Mr. GLAIMO. I do not know that that is so. That is a finding you will have to make.

Mr. QUILLEN. I am not stating that as a statement of fact, but just from testimony.

Mr. GLAIMO. I was not that close to the staff observation so I would be able to observe whether that is a fact or not. That is a finding I cannot make.

But you know—you seem to be talking about the release of classified information. I think you have a real job to do here, and that will be in your recommendations, as to how to solve this problem. How do we handle this very sensitive area that we have to get into as a Congress—how do we handle it and handle it properly, so that we do not jeopard-

ize the legitimate secret functions of Government. But the concern should not be with how do you write rules to classify—to keep secret information secret. I think your biggest problem—because we have plenty of rules for that right now, and even we Congressmen are under a rule that we have to be careful how we declassify or publish it. But your real big problem is going to be what does a Congressman do when he finds out that something has been done that is wrong—how does he perform his constitutional duty to inform his colleagues in the Congress? That is the real tough nut. And our rules are very weak in this area.

In other words, I find out, for example, that we were conducting a secret war in Cambodia. Do I become, because I found that out, in secret, it violates my concept of what my Government should be doing—how do I inform you, my colleagues? There has to be a way—whether it is a secret session of the House, which I understand the rules are very difficult to obtain, or some other way. But we do have to figure out what to do when we become privy to secret information, how do we protect it and at the same time inform our colleagues, so that they know about it, and can make a congressional decision about it? Any light that you can shed on that is going to be helpful. And I know your Rules Committee, Mr. Quillen, is concerning itself with that, as it should, because our rules, I think, are weak.

Mr. QUILLEN. You have made a good point. The Select Committee probably was set up with misgivings, restructured, so to speak, a second time, and then went into operation. Maybe it was just an ill omen all the way through. The last time a secret session was held in the House was back in 1807. Maybe those sessions should be held more often. I would like to submit this for the record, Mr. Chairman.

Mr. FLYNT. Without objection.

[The information follows:]

FROM VOLUME V OF HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, P. 1095

7249. The House has declined to be bound to secrecy by act of the Senate.—On January 26, 1807, a message was received from the Senate by Mr. Samuel Smith (a Senator from Maryland) who said:

Mr. Speaker, I am directed by the Senate of the United States to deliver to this House a confidential message in writing.

The House being cleared of all persons except the Members and Clerk, Mr. Smith delivered to the Speaker a communication:

Gentlemen of the House of Representatives: The Senate have passed a bill suspending for three months the privilege of the writ of habeas corpus, in certain cases, which they think expedient to communicate to you in confidence, and to request your concurrence therein, as speedily as the emergency of the case shall in your judgment require.

After brief debate, during which Mr. John Randolph, of Virginia, declared that they could not be bound to secrecy except by their own act, the House decided—yeas 123, nays 3—

That the message and bill received from the Senate ought not to be kept secret and that the doors be now opened.

Mr. GIAIMO. Well, you know that the Senate had a secret session, I believe, this past year. I think it was on Angola, in fact.

Mr. QUILLEN. Actually, I had some information in my possession that night and had intended to make a motion for a secret session had the Young amendment failed. But we are here today as a mandate of Congress. Overwhelmingly, more than 2 to 1, they said—the

House said—the report should not be released. And now we are trying to find out what happened.

We certainly respect your views, and they ring really a responsive chord throughout the Nation. But somehow the Members of Congress and committees of Congress, and staff members must abide by the classified document regulations that we, as Members, abide by.

Maybe out of this bill will come some fine recommendations.

But we need to put our finger on who leaked the report.

Mr. GIAIMO. No question about that. And there is no question of what you said, that we cannot develop a system here where any one of 435 Congressmen can just merely decide for himself what he will keep secret and what he won't. But there has to be some rule whereby Congress and Members of it can object to secret activities which they consider wrong.

Mr. QUILLEN. There is one thing that has been bothering me about your testimony. You have repeatedly said that there was no classified material in the report and that it was prepared to be released. Maybe you didn't say "no classified material in the report." You said the report itself was not classified.

Mr. GIAIMO. That is right. I believe it did have classified material in there, or information which was gleaned from reading—

Mr. QUILLEN. From classified material. Does this make the whole report classified, in your opinion?

Mr. GIAIMO. No, I don't think so—no. Because I think what you do there, you see, is Congress or a committee of Congress is making a determination and saying: "We are going to publish our thoughts and views on this."

I have to go back to specific examples. The secret war in Cambodia is a good one. When we found out about that in Congress, we published it, in effect, and therefore we published what was a secret. And I am sure they had all kinds of security stamps on everything that was going on in Cambodia. They even kept it from the Secretary of the Air Force, as I recall. He didn't know the war was going on. But, at that point, we published what was therefore a secret. There are times when you are going to have to do that. The question is how do you do it. Should one Congressman have the right to do it? I am not so sure. But he should have a way to inform his colleagues.

Mr. QUILLEN. There should be a method.

Mr. GIAIMO. There should be a method.

Now, let me tell you—I have sat up many a night thinking about these problems for years, because they are troublesome ones. There may come a time when something happens that I become privy to that will so shock my conscience I feel I have to talk about it and tell the people what their Government is doing. In that case, sure, I have the right, under the Constitution, to get in the well of the House and say it. And I can't be questioned in any other place. I sure as heck can be questioned by my colleagues. And I may even be thrown out of Congress. And at that point, I would have to make the decision—what is more important. Now, that is dangerous, because what you are doing is setting yourself up as the sole arbiter of what is right and wrong, good or bad, and that should be done very carefully.

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But I certainly can see where one felt that in good conscience he had to take to the well and speak out, even though he destroyed his own career.

But let's hope that we don't have to, and that we have other avenues developed where we can inform our committees and the House—maybe in secret session, maybe otherwise.

But I think we have to.

And perhaps that is the good that can come from all of the work of the last 1½ years on both sides of the dome.

Mr. QUILLEN. Mr. Chairman, that is all I have to say. I would like for the record to give the date of the last secret session of the House—it escapes me now.

Mr. FLYNT. Without objection.

Mr. Hutchinson.

Mr. HUTCHINSON. I have no questions, Mr. Chairman.

Mr. FLYNT. Mr. Quie.

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Mitchell.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. Giaimo, you have raised enough red flags to keep all of us here all week.

You spoke of covert operations. We are not really here to discuss them. But I think the classic example of perhaps a justifiable covert operation would have been if someone had gotten to Adolph Hitler—it might have been a step in the right direction.

Mr. GIAIMO. You mean during the war or before?

Mr. MITCHELL. What's the choice?

Mr. GIAIMO. Well, we have discussed that. The problem is, it is understandable in the case of Adolph Hitler. But how about in the case of somebody that we don't like down the street? That is the danger with that. Anyway—

Mr. MITCHELL. I'm a little confused about the situation of classification. Mr. Quillen went into it, Mr. Marshall, and Mr. Flynt. You don't feel, or a majority of the committee apparently didn't feel that if there was a classified document intact in the total committee report, that the total committee report was still not classified?

Mr. GIAIMO. That wasn't the situation. I don't think there was—

Mr. MITCHELL. How about the footnote about the Jackson matter? Wasn't that intact, lifted from classified information?

Mr. GIAIMO. I don't recall whether it was lifted intact—you mean about the fact that Jackson had cautioned the CIA—was that it?

Mr. MITCHELL. Yes.

Mr. GIAIMO. I certainly don't think that that was a statement that jeopardized the national security in any way.

Mr. MITCHELL. In other words, the committee could determine what does and what does not jeopardize the national security.

Second: If the document had contained intact a classified document, you still feel that would not classify the committee report. A hypothetical situation. There was in that committee report a document that was lifted intact, placed in the committee report.

Mr. GIAIMO. Let me answer your question this way. I think that Congress—I have been talking about individual Members of Congress with Mr. Quillen. But let me just talk about committees of Congress.

I think a committee of Congress, acting for the Congress—and if it is supported certainly by the Congress—I can say insofar as an executive branch classified matter is concerned, “We are going to tell the Congress and the American people about this matter; we are not going to abide by your executive branch classification.”

Now, I think Congress, congressional committees, can do that, and I think they do that in many instances.

Now, we also made the judgment, however, when we did that—and I have to stress this—that at no time did we think that anything in that report—and I think that right now—nothing in that report jeopardizes the national security of the United States.

Mr. MITCHELL. When we talk about other committees being able to declassify, and your committee, we are plowing new ground, I think. You say other committees declassify. I am not aware of these situations. Do you feel that any committee of Congress, without the approval of the Congress as a body, can declassify any information?

Mr. GIAIMO. I think that is a cloudy area—whether any committee can. This gets back to the fact that we are talking about the need for rules changes. And I think there is very real need for these rules changes. We are all groping, because in the last few years this question has come up. So I don’t know about any committee. But I know that some committees historically have done it. I know that my appropriations committee, if it sets its mind to publicizing something, would do it. I feel that the Armed Services Committee would do it—and that there are some other committees, I am sure.

Now, whether it is all committees, I don’t know.

But we do need clarification, because many of us are worried—we want to act under the rules, but we recognize that we have to know what the rules are, and are they adequate.

Mr. MITCHELL. I think you stated there should be a better method. I think we all certainly feel that there should be, too. But until a better one does come along, it seems like it might be a good idea to abide by the rules we have for members generally.

I don’t think you want to recommend that every member divulge classified information on his own.

Mr. GIAIMO. Sure we will abide by the rules we have. But I don’t know what reference that has to the report. Remember that until the Rules Committee and the House acted, this was a report which was to be published, which was not considered by a substantial majority of the committee as endangering the national security, nor was it considered a classified report.

Mr. MITCHELL. It is a question of whether a committee of the House can declassify. We all know that Congress can make laws and declassify. I think there is no question there. The connection with what I stated was that someone, perhaps not a committee member, someone did offer the whole report to the public.

Mr. GIAIMO. And that was wrong.

Mr. MITCHELL. I have no further questions.

Mr. FLYNT. Mr. Cochran.

Mr. COCHRAN. Thank you, Mr. Chairman.

One of the difficulties in being the junior man on the committee is that everybody asks all your questions before they get around to you.

But I have one that I have been wondering about. And that is, in our mandate, we are asked to look into the circumstances surrounding the publication of the report, and to make findings and recommendations thereon. It has been the judgment of the committee so far, and as outlined by the chairman in his opening statement when the hearings began, that this second part, the recommendations phase of our work, is probably just as important, maybe even more so, than the initial phase of locating the source of the report that was published. He observed in his opening statement that section 5 of article I of the Constitution provides, and I will read: "Each House shall keep a journal of its proceedings and from time to time publish the same excepting such parts as may in their judgment require secrecy."

You referred very eloquently to our Founding Fathers, and their view that the people have a right to decide issues of national policy and the like, and certainly that is true. But it was also contemplated, apparently, by the forefathers, that there would be proceedings of each House that might require secrecy.

In connection with the recommendations phase that we are obliged to make, we have to ask the question now, do we have adequate procedures and rules to deal with information that we have as a body which ought to be kept secret.

In the conduct of your work on the Select Committee on Intelligence, I know that you probably spent a good deal of time talking about some of the subjects that you raised with respect to how does Congress go about declassifying or getting out information that the executive branch wants to maintain in secrecy.

My question is: Did you at the same time consider this question of the appropriateness or the value of the rules and procedures that we now have to maintain legitimately classified information as secret information?

Mr. GIAIMO. We met as a committee when we formed and when we wrote our rules and adopted rules, many of which were adopted from other committees, I believe, which had been involved in this area, to try to set up proper rules to secure the integrity of the secret information. Yes, we did concern ourselves with that. It is a matter of great concern to me and to many members of that committee and other committees, because, you know, that is an inherent problem whenever you tell anyone anything—when two people know—how do you keep the secret. And the more people that know it—and the difficulty is that many people in Congress know more about secret activities now than they used to, so it is a problem for us.

In the executive branch many people know about it, and I am sure it is a problem for them, too.

Mr. COCHRAN. Did you get into the question of the rules of the House?

Mr. GIAIMO. Yes.

Mr. COCHRAN. Or the procedures of the House with respect to maintaining secret information?

Mr. GIAIMO. The rules of the House, as I recall we did—about how to maintain secret information.

Mr. COCHRAN. Earlier in your testimony, you made a statement—I think it was in response to a question Mr. Quillen may have asked, or maybe Mr. Spence—about maintaining secret information, and you

responded by saying that we have plenty of rules for that. Well, if we do, I think that is reassuring to the members of the committee, and also to the House. Do you think that those rules, if we do have plenty of them for that, are adequate, considering the additional oversight responsibilities the House is apparently assuming unto itself with respect to intelligence gathering operations?

Mr. GIAIMO. Perhaps I should have said we have adequate rules, rather than plenty, because I don't know they are that numerous. But we have adequate rules. And my experience on two committees, for some years, has been that we have had no problems keeping secrets. The problem is that now, in the last few years, because of the wrongdoings of some of our members of the intelligence community, and because of Congress' awareness that it has not been observing what they were doing, as it should, the problem is now what do we do to get away from these rules that I said were adequate rules—and usually they were very stringent rules—that things were kept in such secret, not only were they not divulged to the House, but to many, many Members of the House who didn't know about them.

The difficulty is to get away from our old way of doing things. Our old way of doing things was the "old boy" system, where there were a couple of senior people in the Congress, in the House or the Senate, who were privy to much of this secret information, and no one else—even members of the subcommittee.

Just bear in mind that on the Defense Appropriations Subcommittee, on which I have served for some number of years, it was only about 2 years ago, Mr. Chairman, that we became privy to the CIA—the secret activities. Up until then it was an ad hoc subcommittee. We didn't even really know who they were. It was not an official committee.

Now we were able to change it so the whole subcommittee hears the CIA's activities and its budget.

So we have had to loosen up the rules in that sense. And it has been healthy. And there have been no secrets leaked.

Mr. COCHRAN. Is there a rule of the House that would prohibit the release of legitimately classified information by a House employee to a representative of the news media?

Mr. GIAIMO. I think—you know better than I, because you have been studying them lately and I have not—I think there is a prohibition, isn't there? Certainly our rules provided contractually for that, with our staff.

Mr. COCHRAN. I am not sure we have a rule of the House like that. I am not even sure we have a rule that would prohibit, for instance, a Member of the Congress who might, as you suggested a moment ago, take the well of the House and disclose legitimately classified information but, outside of the regular conduct of his job as a Member, give information that is secret information to some unauthorized person. I don't think we have such a rule.

Mr. GIAIMO. I don't think we do, either, now.

Mr. COCHRAN. The question is, Do we need such a rule?

Mr. GIAIMO. I think we are getting dangerously close to an official secrecy act, which I object to most strongly and would not want to see. And therefore, I don't think that you would have that kind of a rule, because it would in effect impose an official secrets act type of legisla-

tion which we do not have, and which would be unconstitutional, given some of the recent decisions in the Pentagon papers and other things.

Mr. COCHRAN. I have no further questions.

Thank you very much.

Mr. FLYNT. I just have one question, prompted by the line of questioning of the gentleman from Mississippi.

What would be your objection to an official secrets act?

Mr. GIAIMO. I think that more harm and danger would come about from it. Mr. Chairman, than would be the benefits. What would be the benefits? The benefits would be to punish people who found out about secret Government activities and published them. Now, I have no sympathy for people doing that. But—you know, we are going on a long time here. I don't want to take the committee's time. I would love to discuss this, because it is a subject that I think needs discussing.

Mr. FLYNT. Let me rephrase the question. If we could properly determine which secrets ought to be kept, would you have an objection to providing some mechanism for keeping those?

Mr. GIAIMO. Yes, sir, Mr. Chairman. I grew up with a healthy mistrust of government. I feel that you have got to, like Thomas Jefferson and others said—you have got to worry about government, because government will perpetuate itself, and therefore when a citizen finds out something that shocks him—for example, again, that secret war in Cambodia—and he speaks out about it, I think that the public interest is better served by finding out.

Now, if you have an official secrecy act, you are going to intimidate this man or woman, and they are going to be concerned with going to jail, and therefore they may keep quiet and become part of the conspiracy of secret and silence.

We would have been better served, for example, in the Bay of Pigs episode, where we are told that certain newspapermen knew about it but kept it quiet—we would have been better served if they had broken that secret and published it and let the American people know. We might not have had that Bay of Pigs incident.

I think democracy survives better in an atmosphere of awareness and openness. And I think an official secrecy act would tend to intimidate people, and intimidation is the name of this game of secrecy.

Mr. FLYNT. Would you give away our research and development specifications?

Mr. GIAIMO. Would I give it away?

Mr. FLYNT. Yes. I mean do you think that ought to be made public?

Mr. GIAIMO. No. I don't think a lot of these secrets ought to be made public. But I think we have survived for 200 years without an official secrecy act. And I don't think that I would want to see one imposed today.

Now, England has one, and England has been able to survive with one. But I would not like to see us do it here in the United States. It would be in my opinion the wrong way, in that it would be giving Government an added weapon against its citizens.

Remember, there were some courageous people whom many of us dislike and disagreed with who spoke out during the days of Vietnam and would have violated an official secrets act if it had been in existence. What do you do if you have a tyrant in Government? You

could be prohibited by an official secrets act from speaking out against him.

These are all, as you know, philosophical, controversial, tough questions to answer.

We have done pretty well as a Government. We have done very well as a people. For 200 years we have served our Nation well. And we are a great Nation and a great Government. Let's keep it that way.

I think if we can survive without it, let's do it.

Mr. BENNETT. What you said about the Bay of Pigs brings back to me a very difficult decision I had to make, because I was a member of the CIA Committee at that time, and I was informed about it, in advance.

My own personal feeling was that it would not succeed, without going into the details of it, basically it was because not enough force was involved. My own conclusion was, if it was to be undertaken, it ought to be openly undertaken to reestablish democratic government in Cuba. And I went to see President Kennedy about it.

I did not release the information to the public because I really didn't know what I should do. I thought if I went to the President, in whom I had great confidence, that that is what I should do, and that is what I did do.

At this moment I don't know whether I should say what he told me at that time or not. But I can say he shared my feeling of disquietude about covert operations, and I think I will leave it at that point, except to say that this was a difficult governmental decision for me to make.

I was adamantly opposed to what I thought was going to transpire, and I thought Mr. Allen Dulles had a euphoria about the situation which had no foundation in military probabilities, and yet he was obviously going to go ahead.

Now, the same thing obtains, well, not the same thing because we are not planning any more Bay of Pigs at the moment, but the same sort of decision occurs before the CIA committees now.

I am not talking about necessarily covert operations, but as to the propriety of covert operations, not necessarily specific ones.

As I said before to you, I am not convinced that they are worth it. I think the dangers and damage that come to our country, my own judgment at this moment is, have exceeded any possible benefits. And I share with you your concern about secret Government. I would like to add to it that it's not just Presidential secret Government, it partly is bureaucratic secret Government.

When a thing like this is already well planned and implemented and the President is prepared with this, it's almost a fait accompli, in my opinion, in some cases, and the decision must be a very difficult one for the President to make.

So, I am saying to you it isn't the President who sits up here and thinks up all of these things to do, but having an institution like the CIA which can go headway with a covert operation with the consent of the President, I presume in every case, doesn't keep bureaucracy from thinking up new adventures. And my own judgment is it has been more harmful to our country than beneficial.

There are probably examples of places where covert operations have been helpful, but when I add them all up, going back to the early

history of our country, and coming down to today, I don't think it adds up on the plus side. And it does terrible damage to the United States' leadership potential, which is based basically upon what is morally right, and what is proper, to sustain itself on its own merits.

Mr. FLYNT. Mr. Price?

Mr. PRICE. No questions.

Mr. FLYNT. Thank you, Mr. Giaimo, for your appearance before the committee and your comments and contributions to the committee.

Mr. GIAIMO. Thank you very much, Mr. Chairman.

Mr. FLYNT. Mr. Roscoe B. Starek III.

Mr. Starek, would you raise your right hand, please.

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. STAREK. I do.

TESTIMONY OF ROSCOE B. STAREK III, MINORITY COUNSEL, SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES

Mr. FLYNT. You may be seated.
Counsel?

Mr. STAREK. Thank you, Mr. Chairman.

Mr. MARSHALL. Mr. Starek, for the record, would you state your full name and present residence?

Mr. STAREK. Roscoe B. Starek III, 7201 47th Street, Chevy Chase, Md.

Mr. MARSHALL. Would you talk just a bit louder, Mr. Starek?

Now, Mr. Starek, where are you presently employed?

Mr. STAREK. I am employed as the minority counsel on the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee.

Mr. MARSHALL. Mr. Starek, you were counsel, were you not, sir, to the Select Committee on Intelligence?

Mr. STAREK. Yes, Mr. Marshall.

Mr. MARSHALL. And when did you begin work as counsel for that committee?

Mr. STAREK. As I recall, June 9, 1975.

Mr. MARSHALL. And when did you leave that committee?

Mr. STAREK. I went off the payroll on February 29, 1976.

Mr. MARSHALL. Now, you are presently appearing at the invitation of this committee?

Mr. STAREK. Yes, sir.

Mr. MARSHALL. Prior to the hearing you have received copies of House Resolution 1042 and 1054, as well as copies of the rules of this committee, the investigative procedures, and a copy of Chairman Flynt's opening statement.

Mr. STAREK. That is correct.

Mr. MARSHALL. Do you have a written prepared statement which you wish to file with this committee?

Mr. STAREK. No; I do not.

Mr. MARSHALL. Do you have an oral statement which you wish to make to the committee?

Mr. STAREK. No, sir.

Mr. MARSHALL. You have turned over to this committee staff all documents which were requested that you turn over and in your possession involving your select committee work?

Mr. STAREK. Yes; I have.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information, or information which may tend to defame, degrade or incriminate any person, would you please call that to this committee's attention in a timely fashion so it may take appropriate action under the Rules of the House of Representatives?

Mr. STAREK. Yes, sir.

Mr. MARSHALL. Mr. Starek, you have prepared a memorandum dated February 23, 1976, addressed to the Honorable Robert McClory; did you not, sir?

Mr. STAREK. Yes, sir.

Mr. MARSHALL. And that memorandum concerned security regulations and procedures in the Select Committee on Intelligence; is that right, sir?

Mr. STAREK. That is correct, sir.

Mr. MARSHALL. Is it not correct that this memorandum contains a survey, if you will, of your views as to the security procedures and whether they were adhered to during the select committee's life?

Mr. STAREK. Yes, sir.

Mr. MARSHALL. Could you summarize for us very briefly your views as set out in that memorandum and any up-to-date amendments to the memorandum that you think should be made and brought to this committee's attention?

Mr. STAREK. Well, as I recall—

Mr. MARSHALL. You may have a copy of the memorandum, if that would be helpful to you.

Mr. STAREK. That would be helpful.

Well, as I recall, I reviewed the security regulations and cited specific examples as to when the regulations were adhered to. I reviewed the physical facilities for Mr. McClory, with respect to the safes and who had possession of the combinations of those safes, to my knowledge. Basically, I outlined a system of how the security regulations and procedures were supposed to work, and then I described how, in fact, they did work.

Mr. MARSHALL. Is it correct to say that it was your view, as set out in that memorandum, that the security procedures were by and large adhered to initially during the life of the committee, but that as things got more hectic and time pressures became greater that these security procedures were not adhered to?

Mr. STAREK. I think that is a fair statement. But I think that specific phrase, as I used it in the memorandum, referred to one specific security measure.

Mr. MARSHALL. All right, sir. Would you elaborate which specific security measure you are referring to?

Mr. STAREK. It was the one with respect to reviewing classified materials in a secure library area or secure area near the files.

Mr. MARSHALL. And what did you conclude about that, sir?

Mr. STAREK. As time went on, and I think you received testimony earlier to this effect, persons were allowed to review and work with materials at their desks.

Mr. MARSHALL. Now, did you also find instances where persons on the staff were allowed to contact the various governmental departments directly to obtain documents without going through the chain of command through the staff director?

Mr. STAREK. I am not sure I follow you. Everybody who went to the particular agencies were sent with the full knowledge of the staff director.

Mr. MARSHALL. But were there instances where the members of the staff would contact those persons in other agencies directly, rather than going through one central committee staff member for that purpose?

Mr. STAREK. Where members of our staff would contact representatives of the various intelligence agencies?

Mr. MARSHALL. Yes, sir, correct.

Mr. STAREK. Well, at each intelligence agency we had to work through specific liaison staffs that were established for the purpose of working with the congressional investigating committees. I don't now recall any instances where persons did not deal with the designated persons in the intelligence agencies directly, before then seeking interviews with members of the intelligence agencies.

Mr. MARSHALL. Now, what were the circumstances surrounding your preparing that memorandum?

Mr. STAREK. Mr. McClory asked me to prepare it.

Mr. MARSHALL. Would you hand that memorandum, if you would desire, to the court reporter so she may make it an exhibit to your testimony?

Mr. FLYNT. Without objection, this memorandum will be included in the report.

[The memorandum referred to appears at the end of Mr. Starek's oral testimony.]

Mr. MARSHALL. Now, did you see members of the news media in the select committee spaces during the period January 19 to January 23, 1976?

Mr. STAREK. Well, yes, sir, but only in the foyer or entryway area.

Mr. MARSHALL. And who were those news media persons that you observed?

Mr. STAREK. Well, I recall seeing Daniel Schorr there. Others that I didn't recognize. I think Jim Adams was probably there, also, at one point. There were several persons who I assume, who I think were reporters, persons that I had seen in our committee hearings.

Mr. MARSHALL. Did you have any direct or personal contact with these persons in the news media?

Mr. STAREK. You mean in the time period we are talking about?

Mr. MARSHALL. Yes, during that time period.

Mr. STAREK. Not that I recall.

Mr. MARSHALL. With whom were they speaking or were they talking at the time you observed them?

Mr. STAREK. Well, I don't remember anyone in particular. Carolyn Andrade, our administrative officer, sat out in that area, and often times representatives of the news media would come by to pick up

public documents which were placed on an empty desk that was located in that entryway. I know they must have spoken with her. I just don't recall anyone else.

Mr. MARSHALL. Do you recall telling our staff you saw Mr. Schorr speaking with Mr. Donner, Field, and Carolyn Andrade? Does that refresh your recollection?

Mr. STAREK. Do you mean the specific period January 19?

Mr. MARSHALL. Yes, sir.

Mr. STAREK. I don't recall, but that could be the case. That is generally representatives of the news media, if they came for a purpose other than picking up material, they would request to see Mr. Donner or Mr. Field.

Mr. MARSHALL. All right. You have looked at the draft of the report or part of the report which appeared in the Village Voice, have you not, sir?

Mr. STAREK. Yes, I have.

Mr. MARSHALL. Do you have any judgment as to which particular draft of the select committee's report was the one published in the Village Voice?

Mr. STAREK. Not specifically, not exactly. I know it certainly wasn't the first draft and it wasn't the final draft.

Mr. MARSHALL. When you say the first draft, you are referring to the draft of January 19?

Mr. STAREK. That is correct.

Mr. MARSHALL. And the final draft, the draft of January 23 as adopted by the committee?

Mr. STAREK. When I say final draft I mean a draft including changes which the staff was authorized to make during the week of January 26.

Mr. MARSHALL. What is the basis for your view that it was not the first nor the last draft?

Mr. STAREK. Simply by reading, having read the draft.

Mr. MARSHALL. Is there any specific part of the text which appeared in the Village Voice which would enable you to identify more closely which particular draft it contained?

Mr. STAREK. Specifically, I recall certainly the sections of the report which I helped write, and those were not exactly the same as they were written or as they were completed during the week of the 26th. One footnote in particular I am sure was changed because we had a lengthy debate over it.

Mr. MARSHALL. Do you recall which footnote that was?

Mr. STAREK. Not by number, but it had to do with a presentation by Mr. Kirschstein and myself to the select committee.

Mr. MARSHALL. At least in one draft you and Mr. Kirschstein were referred to specifically in the footnote.

Mr. STAREK. That is correct.

Mr. MARSHALL. But the Village Voice did not contain that reference?

Mr. STAREK. That is correct.

Mr. MARSHALL. With regard to that particular footnote, do you have any recollection as to when that footnote was changed as to which draft it was changed in?

Mr. STAREK. It was changed during the week of the 26th early on, I think.

Mr. MARSHALL. During the what?

Mr. STAREK. Week of the 26th of January.

Mr. MARSHALL. The 26th of January?

Mr. STAREK. Yes.

Mr. MARSHALL. But the change did not appear in the Village Voice?

Mr. STAREK. That is correct.

Mr. MARSHALL. All right, sir.

Mr. Starek, Mr. Schorr, Daniel Schorr has stated in an article in Rolling Stone of April 8, 1976, that on January 25, 1976, he had possession of the select committee report, at least a draft of that report.

Did you give this report or a draft of the report or any portion of the report to Mr. Schorr or to any other person?

Mr. STAREK. No.

Mr. MARSHALL. Do you know anyone who did?

Mr. STAREK. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of any draft of the select committee's report or any part thereof?

Mr. STAREK. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. STAREK. No, sir.

Mr. MARSHALL. Did you give the report or a draft of the select committee's report, or make any part of the select committee's report or a draft available to anyone outside of the Select Committee on Intelligence?

Mr. STAREK. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. STAREK. No, not directly. I have read the newspaper that one of the members did. But, other than that, I have no direct knowledge.

Mr. MARSHALL. When you say you read in the newspaper that one of the members did, are you referring to the testimony last week?

Mr. STAREK. Yes, sir.

Mr. MARSHALL. All right, sir, that was the member who is supposed to have made it available to the CIA, is that the particular reference?

Mr. STAREK. That is what I am referring to, sir.

Mr. MARSHALL. Other than that, do you have any knowledge of anyone who made the report or a draft of the select committee's report available to anyone outside of the Select Committee on Intelligence?

Mr. STAREK. No.

Mr. MARSHALL. All right.

Mr. FLYNT. Mr. Price?

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. I have no questions, Mr. Chairman.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No; I don't have any questions.

Mr. FLYNT. Mr. Starek, we thank you for your appearance before the committee, and you may step down.

Mr. STAREK. Thank you, Mr. Chairman.

[The following memorandum, previously referred to, was received for the record:]

SELECT COMMITTEE ON INTELLIGENCE,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., February 23, 1976.

MEMORANDUM

To: The Honorable Robert McClory.

From: Ross Starek.

Subject: Security regulations and procedures in the Select Committee on Intelligence.

Attached is the memorandum regarding the security apparatus and procedures which you requested last Friday. In addition, I have enclosed the other materials you mentioned during our conversation. They include the following:

Five copies of the Select Committee Rules and Regulations; a list of the Staff Members, and a copy of the Employee Agreement executed by every staff member.

BACKGROUND

The security system established and used by the Select Committee on Intelligence was relatively simple and straightforward. In theory, both the system itself and the security devices were certainly adequate to insure safekeeping and to prevent mishandling of classified documents and other materials. Indeed, shortly after we moved to our Rayburn offices (August 1975), representatives of the CIA's Office of Security reviewed the system and informally approved its implementation.

ACCESS TO CLASSIFIED MATERIALS

Generally, all Committee Members and staff had access upon request to any and all classified materials received or obtained by the Committee.¹ In the case of staff members, access was to be determined by the staff director in consultation with the Chairman and Ranking Minority Member.²

Briefly, the system was designed to operate as follows:

(1) Copies of all written requests for documents were kept in a centralized "Request Book." Hess was the caretaker of the Book, but all staff had access. When a particular request was complied with, the cover letter accompanying the materials would be filed in the Book, and the particular person requesting the materials would be notified of its receipt.

(2) Hess and her staff would file the documents in the safes.

(3) Anyone wishing to see the materials signed for them with the documents control clerk (Brooks). Materials were to be reviewed in the area adjacent to the library in the Committee offices.³

(4) No classified materials were to be removed from the offices or photocopied without the permission of the staff director.⁴

(5) Materials used in the hearings would be transported by the security officer (Hess) and her designated representatives.

PHYSICAL FACILITIES

The Committee had approximately fourteen combination file cabinet safes at its disposal. The safes were arranged in a cluster which cordoned off a secure area. The security officer, Jacqueline Hess, had the combinations to all the safes. A copy of those combinations were kept by the Administrative Officer, Carolyn Andrade. Hess was the only staff member who opened the safes.

One safe was designated as an "overnight safe". This was used when staff members were working late with classified materials. The documents were to be

¹ Security Procedures and Regulations, Select Committee on Intelligence, Nos. 1 and 2.

² *Ibid.*, at No. 2.

³ *Ibid.*, at No. 6.

⁴ *Id.*

deposited in this safe when the staff members left the office. Herb Brooks, the document control clerk, had the combination to this safe. Individual staff members were required to deposit materials in this safe; however, Hess and her staff were the only ones who filed materials in the other safes.

Materials were filed in the safes in two methods. Firstly, materials were filed under Agency and Project. In addition, each staff member had a specific drawer in which he could keep materials on which he was working. Thus, it was difficult to locate specific documents, as they could have been filed under either system.

OPERATION OF THE SYSTEM

The system, as established by the Security Regulations, operated well initially. However, as time passed, the strict operating procedures gave way to the Committee's hectic hearing schedule. Regulations were overlooked in the rush to collate materials for the various hearing books. For example, Regulation No. 6, which provides that "All classified materials may be examined only at reading facilities located in the secure area . . .", was breached on numerous occasions. Attorneys and investigators signed for documents, but were able to take them at their leisure to their desks and presumably out of the office. Copying and duplicating of the materials was not controlled or regulated. Once the materials were signed for with the document control clerk, they could be used for days without returning them to the secure area.

A second widespread failure to comply with the Security Regulations concerned Security Regulation No. 3. The Regulation specifically required the Committee staff to submit all materials and documents received pursuant to H. Res. 138 and H. Res. 591 to the security director. Several staff members obtained documents directly from the agencies' representatives and failed to place the materials in the central files. These abuses were not widespread, but they did take place in certain cases.

On several occasions, the staff director made it clear that he was opposed to any compartmentalization system—either the agencies' systems or a need-to-know basis. The agency urged implementation of either system; however, neither the Chairman or any members of the staff wanted such a system. However, when the Committee studied very sensitive covert action projects, which are reflected in the Final Report, only those staff members directly responsible for the project had access to the material. Of course, this did not include Field, Donner, Boos, or the research/library staff.

It is important to point out that the investigators, attorneys, and the writers oftentimes were not aware of all the ongoing projects or their supporting documents. For example, an attorney who worked on a domestic intelligence assignment most likely had no idea what documents or materials were being used by a counterpart working on a foreign intelligence project. It is fair to say that the reverse was true also. Persons with access to all materials and the knowledge of what documents the Committee had in its possession included Field, Donner, Boos, Hess, Paisner, Poor, Hattery, Brooks, and Burke. The latter group were the people assigned to research and document control.

CONCLUSION

Any staff member, with very little difficulty, could have had access to any document. Any document could have been removed, copied, or leaked. However, all staff members signed a security agreement⁵ (copy attached), and most, if not all, staff members complied with its provisions. If classified materials were removed from the Committee offices, it clearly was the exception to the procedure and practice.

EMPLOYEE AGREEMENT

1. I have read House Resolution 591, 94th Congress, establishing the House Select Committee on Intelligence, and the Committee's Rules and Security Regulations.

2. I understand that as a condition of employment with the Committee I am required to, and hereby agree to, abide by House Resolution 591, 94th Congress, and by the Committee's Rules and Security Regulations.

⁵ *Ibid.*, at No. 9.

3. I agree not to accept any honorarium, royalty, or other payment for a speaking engagement, magazine article, book, or other endeavor connected with the investigation and study undertaken by the Committee.

4. I further agree that I will not divulge to any unauthorized person in any way, form, shape or manner the contents of classified information received or obtained pursuant to House Resolution 591, 94th Congress. I understand that it is my responsibility to ascertain whether information so received or obtained is classified. I further understand and agree that the obligations hereby placed on me by this paragraph continue after my employment with the Committee has terminated.

5. I further agree that until such time as the Committee has made its final report to the House I will not divulge to any unauthorized person in any way, form, shape or manner the work product or memoranda of the Committee or any material or testimony received or obtained pursuant to House Resolution 591, 94th Congress, unless specifically authorized by the Committee.

6. I understand that failure to abide by any of the foregoing will subject me to immediate termination of my employment with the Committee.

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Yamamoto, Tina
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Zeune, Sandra
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Mr. FLYNT. The committee will recess subject to the concurrence of the committee, until 1 o'clock this afternoon. The hour of 1 o'clock for reconvening is suggested in an effort that we may expedite the hearings and use all available time for this purpose.

Without objection, the committee will stand in recess until 1 p.m. this afternoon.

[Whereupon, the committee recessed, to reconvene at 1 p.m. this afternoon.]

AFTERNOON SESSION

Mr. FLYNT. The committee will come to order.

A quorum is present for the purpose of taking testimony and receiving evidence.

Mr. Rushford, will you rise and be sworn?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. RUSHFORD. I do.

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Mr. Rushford, would you state your name and present address for the record, please?

TESTIMONY OF GREGORY G. RUSHFORD, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE

Mr. RUSHFORD. My name is Gregory Gene Rushford. I reside at 261 Commons Drive in Vienna, Va.

Mr. MARSHALL. You are appear at the invitation of the committee.

Mr. RUSHFORD. I am appearing voluntarily, yes, sir.

Mr. MARSHALL. Prior to the hearing you received copies of House Resolutions 1042 and 1054, as well as the rules of the committee, investigative procedures adopted by this committee and a copy of Chairman Flynt's opening statement?

Mr. RUSHFORD. Yes, sir.

Mr. MARSHALL. Now, as I understand it, Mr. Rushford, you were a member of the select committee staff during its existence?

Mr. RUSHFORD. I was a staff member.

Mr. MARSHALL. All right, sir, and when did you come to the select committee?

Mr. RUSHFORD. Sometime around June 20, 1975.

Mr. MARSHALL. All right, sir, and when did your duties terminate?

Mr. RUSHFORD. The last day of February 1976.

Mr. MARSHALL. Could you outline very briefly the scope of your duties and responsibilities with the select committee?

Mr. RUSHFORD. I was an investigator and I did the investigation on the analytical performance of the intelligence agencies on six foreign events that we selected at random, the Mideast War, Cyprus crisis, and four others and did some work on the Forty committee's procedures and did the investigation on the adequacy of Soviet compliance with the SALT talks.

Mr. MARSHALL. All right. Do you have a written, prepared statement which you wish to make to the committee at this time?

Mr. RUSHFORD. No, sir.

Mr. MARSHALL. All right. Do you have an oral statement?

Mr. RUSHFORD. Not at this time.

Mr. MARSHALL. Now, have you produced for the staff of this committee the documents which you were requested to produce which concern the subject matter of this investigation, that is, the documents in your possession?

Mr. RUSHFORD. I had no documents in my possession, and produced none.

Mr. MARSHALL. Now, in the event your evidence or testimony may involve any information or data concerning executive sessions of the select committee, classified information or any information or data which would tend to defame or incriminate or degrade any person, would you advise this committee so it can take appropriate and timely action under the Rules of the House of Representatives?

Mr. RUSHFORD. Yes.

Mr. MARSHALL. Mr. Rushford, did you have anything to do with the distribution of the first complete draft of the select committee's report, that is the draft of January 19, 1976?

Mr. RUSHFORD. I had very little to do with it, but I did have something to do with it.

Mr. MARSHALL. All right, would you outline for us what your responsibilities were in that regard?

Mr. RUSHFORD. Well, the day the report was distributed, you say January 19?

Mr. MARSHALL. Yes.

Mr. RUSHFORD. There were several copies originally distributed to I believe five of the members which had some sort of typographical error, and I substituted then the volume I, and visited several offices.

Mr. MARSHALL. Now, while in the course of your visits to several offices, did you have occasion to observe any staff of committee members, that is select committee members reading the January 19 draft that had been distributed earlier that day?

Mr. RUSHFORD. Yes. When I delivered the copy of the report to Congressman Aspin's office I walked in the office, and to the right was a staff member of Mr. Aspin's who was reading the volumes of the report and I just switched the one volume and left.

Mr. MARSHALL. Did you have any other instances where you saw staff of committee members, that is select committee members having access to the January 19 draft or a later draft?

Mr. RUSHFORD. Not where I saw it, but where I discussed the subject on the telephone. I called Congressman McClory's office and spoke

with Mr. Ahern, and he said he was reading volume II while the Congressman was reading volume I.

Mr. MARSHALL. Did you have any responsibilities with regard to the distribution of the January 23, 1976, that is, draft, that is the draft subsequently with some changes that was adopted by the select committee?

Mr. RUSHFORD. No.

Mr. MARSHALL. Now during the course of the select committee's deliberations in preparation for issuing its report, did it come to your attention that there had been any leaks from the select committee or from any other sources?

Mr. RUSHFORD. There were no leaks on any projects that I was involved in. But I do remember two such leaks, though, sometime in October, I guess.

Mr. MARSHALL. Of 1975?

Mr. RUSHFORD. Yes.

Mr. MARSHALL. Were the sources of those leaks ever identified, to your knowledge?

Mr. RUSHFORD. No.

Mr. MARSHALL. Was any investigation initiated to determine the source of those leaks?

Mr. RUSHFORD. Well, I believe so, but since I wasn't directly involved in the subject matter I wasn't involved in what actually was done to uncover the leak and I really don't know.

Mr. MARSHALL. Did you ever see any news media persons inside of the select committee spaces, and by that I mean past the security guard that was posted to log people in and out?

Mr. RUSHFORD. Not that I recall, no.

Mr. MARSHALL. Do you recall overhearing a conversation between Mr. Field and a man who was later identified as "Dan"?

Mr. RUSHFORD. Oh, yes.

Mr. MARSHALL. All right, sir, when was that conversation?

Mr. RUSHFORD. It was in the week or so before the report was voted on to be made public, somewhere between January 19, I suppose, and the 23d.

Mr. MARSHALL. Where were you when you overheard that portion of the conversation?

Mr. RUSHFORD. I was standing back at Searle Field's desk and we were discussing the matter, and the phone rang and he picked it up and somebody talked, and he said, "Dan, there is no way I am going to give you," you know, "a copy of this, you are going to have to wait your turn," or something like that, and then I laughed and I said, "Is that Dan Schorr?" And he said, "Yes," and that is all there was to it.

Mr. MARSHALL. All right. Now, you published an article, did you not, in the National Observer for the week ending May 15, 1976, entitled "Our Passive, Timid CIA."

Mr. RUSHFORD. Yes; I did. I did not write the headline.

Mr. MARSHALL. All right, did you write the article?

Mr. RUSHFORD. Yes.

Mr. MARSHALL. Now, do you recall signing an agreement when you went on the committee staff that you would not divulge information you obtained by reason of your employment, that is, information which is not in the public domain?

Mr. RUSHFORD. Yes, that's right.

Mr. MARSHALL. Where did you get the information in that article? So I may give you the general train, what I am interested in determining is how you construed this agreement that you had signed, and the possible conflict, if there is such a conflict, between the agreement and the fact that you had published an article on the CIA?

Mr. RUSHFORD. I have published two. One in the Washington Monthly entitled, "Making Enemies."

Mr. MARSHALL. I take it that didn't come by reason of your work on the committee staff, did it?

Mr. RUSHFORD. Yes. It had something to do with it. It was a story of our struggle to get classified information.

I can answer your questions very easily.

Mr. MARSHALL. All right, if you will.

Mr. RUSHFORD. The National Observer article was derived entirely from the public hearings of the Pike committee, and have been published, and before I wrote any article, even based on public information, I discussed this with Searle Field and Congressman Pike, and I later discussed the National Observer article with Congressman McClory, and nobody saw any objection to it. In fact, any reporter could have written the same articles if they had read the hearings, and analyzed them.

Mr. MARSHALL. Mr. Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report of January 25, 1976. Did you give this report or a draft of any part of this report or any other select committee report to Mr. Schorr or to any other person?

Mr. RUSHFORD. No, I had absolutely nothing to do with it.

Mr. MARSHALL. Do you know anyone who did?

Mr. RUSHFORD. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of any draft of the select committee or draft of the select committee report?

Mr. RUSHFORD. No.

Mr. MARSHALL. Or any part of it?

Mr. RUSHFORD. No, except I attended the executive session when the committee went over the report line by line to vote on whether this should be made public. Other than that, I have no knowledge.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. RUSHFORD. No.

Mr. MARSHALL. Did you give the report or make any part of the select committee report available to anyone outside of the Select Committee on Intelligence? By that I mean report or any draft of the report?

Mr. RUSHFORD. No.

Mr. MARSHALL. Do you know anyone who did?

Mr. RUSHFORD. No.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. I don't have any questions.

Mr. FLYNT. I have no questions.

Mr. Marshall, do you have any further questions?

Mr. MARSHALL. No, sir, I don't

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Mr. FLYNT. We thank you for your appearance before the committee.

Mr. RUSHFORD. You are welcome.

Mr. FLYNT. You may step down.

The committee will stand in recess until 1:45.

[A short recess was taken.]

Mr. FLYNT. The committee will come to order.

Mr. MARSHALL. Ms. Poor, would you take the witness stand, please?

Mr. FLYNT. Ms. Poor, would you raise your right hand, please?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. POOR. I do.

TESTIMONY OF SUSAN POOR, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY MICHAEL GREENBERG, COUNSEL

Mr. FLYNT. You may be seated.

Mr. MARSHALL. Ms. Poor, would you state your name for the record please?

Ms. POOR. Susan Poor.

Mr. MARSHALL. Would you speak up just a bit, please, so we can hear you?

Ms. POOR. My name is Susan Poor.

Mr. MARSHALL. Where do you live, Ms. Poor?

Ms. POOR. 4114 South 36th Street, Arlington, Va.

Mr. MARSHALL. Are you presently employed?

Ms. POOR. Yes; I work for Congressman Edward Koch.

Mr. MARSHALL. Now Ms. Poor, you were a member of the staff of the Select Committee on Intelligence?

Ms. POOR. Yes.

Mr. MARSHALL. When did you first become employed by the select committee?

Ms. POOR. September 3, 1975.

Mr. MARSHALL. And when did you terminate your duties with the select committee?

Ms. POOR. The end of February 1976.

Mr. MARSHALL. Could you give us your job title and a general outline of your duties with the select committee?

Ms. POOR. I was hired as a research assistant for the committee, and that included doing some background research, memorandum for some of the investigators, working on the security areas in the back in terms of charging out documents and letters, preparing briefing books for hearings.

Mr. MARSHALL. Now, you are appearing at the invitation of the committee?

Ms. POOR. Yes.

Mr. MARSHALL. All right. And you are appearing with counsel?

Ms. POOR. Yes.

Mr. MARSHALL. Would you introduce your counsel or have him identify himself?

Mr. GREENBERG. My name is Michael Greenberg.

Mr. MARSHALL. Prior to the hearing, Ms. Poor, you received copies of House Resolutions 1042 and 1054 and copies of the rules of the committee, and a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement, have you not?

Ms. POOR. Yes; I have that here. I have it, I have not read the chairman's opening statement. We just got that today.

Mr. MARSHALL. All right, if you should desire to consult with counsel with regard to the opening statement, you may do so now.

Mr. GREENBERG. Mr. Marshall, this was just handed to us right now. I don't think we have had a chance to read through it, and I think we will go ahead.

Mr. MARSHALL. You would like to go ahead, all right. Do you have a written statement you would like to file with the committee at this time?

Ms. POOR. No, I do not.

Mr. MARSHALL. Do you have an oral statement which you would like to present to the committee at this time?

Ms. POOR. No, I don't.

Mr. MARSHALL. Now, have you produced to the staff of this committee all documents which were in your possession with regard to the Select Committee on Intelligence's work?

Ms. POOR. No. I was never asked to do that.

Mr. MARSHALL. And do you have any documents in your possession?

Ms. POOR. I have some memorandums that I drew up while I was on the committee.

Mr. MARSHALL. Did those contain classified information, to your knowledge?

Ms. POOR. No, they did not.

Mr. MARSHALL. Would you be willing to allow the staff to look at those memorandums?

Ms. POOR. Yes, I would.

Mr. MARSHALL. Now, in the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or evidence which may tend to defame, degrade, or incriminate any person, would you please advise this committee in a timely fashion so that it can take appropriate action, under the Rules of the House of Representatives?

Ms. POOR. Yes.

Mr. MARSHALL. To whom did you report on the select committee staff, Ms. Poor?

Ms. POOR. My immediate supervisor was Jackie Hess.

Mr. MARSHALL. And would you, for the record, identify Miss Hess' job title, if you know it?

Ms. POOR. I am not sure I have it exactly, she was the head of the research department and the head of the security for the committee.

Mr. MARSHALL. Now, Ms. Poor, we have received testimony here identifying the first person that leaked drafts of the Select Committee on Intelligence report as a January 19, 1976, draft. Do you recall that particular draft of the report?

Ms. POOR. If that was the draft that went out to the committee members, that is the one that I would recall.

Mr. MARSHALL. Do you recall that there were two distinct distributions to the committee members, the first being the original draft of

the select committee's report, and the second being a later draft or a draft of the January 23, 1976?

Ms. POOR. They were not two separate deliveries of the report. I mean, there were changes made on the January 19 version.

Mr. MARSHALL. And you recall that the January 23 draft, with some changes, was finally adopted as the select committee's report?

Ms. POOR. Yes.

Mr. MARSHALL. All right. Now, with regard to the January 19, 1976, draft, that is the first draft that was distributed to committee members, did you have any responsibility to assist in distributing that draft or preparing it?

Ms. POOR. I had responsibilities in preparing and distributing it.

Mr. MARSHALL. All right. Now, would you outline in your own words what you did in connection with the preparation of that draft?

Ms. POOR. In preparation of the draft, I was working under the supervision of Emily Sheketoff and what I did then was at her direction.

Mr. MARSHALL. All right.

Ms. POOR. Mainly, I typed pages of the report that were eventually going to go into the final report, and as they were written we would type them, and then they would be compiled into the report.

Mr. MARSHALL. All right. Did you have any other responsibilities such as Xeroxing of those pages?

Ms. POOR. I did do some Xeroxing at her direction, yes.

Mr. MARSHALL. Now, where was the Xerox machine located in the select committee spaces?

Ms. POOR. It was in the second section, the whole committee room, as you walk past the reception area, it would have been behind the first wall and there was a door there and the Xerox machine was right behind that first division.

Mr. MARSHALL. Was there a staff member assigned to the Xerox machine to control what was Xeroxed, and the numbers of copies Xeroxed of the select committee draft report?

Ms. POOR. No one that I knew that was specifically assigned to do that, no.

Mr. MARSHALL. Did you yourself do some Xeroxing of the January 19, 1976 draft of the select committee report?

Ms. POOR. Yes, I Xeroxed some of those pages.

Mr. MARSHALL. Could you then determine the number of copies Xeroxed or did you have to check with somebody in charge of the machine to determine?

Ms. POOR. That wasn't my decision to make. When I was at the machine, the number was already set, and I was just taking over for somebody else who had been Xeroxing before I Xeroxed.

Mr. MARSHALL. What was the number set at on the January 19, 1976, report?

Ms. POOR. I believe it was 20.

Mr. MARSHALL. But that had already been set at the time you did your Xeroxing?

Ms. POOR. Yes.

Mr. MARSHALL. Was there anyone to oversee your Xeroxing to determine that you Xeroxed only 20 or did not change the numerical designation on the machine?

Ms. POOR. Well, Emily Sheketoff was there coordinating the whole effort, and it was on her direction the machine was set at 20, and we were deciding to do 20. That is all we were collating at that point.

Mr. MARSHALL. Was there anyone there supervising your work to determine if an additional number was Xeroxed?

Ms. POOR. Emily Sheketoff was there.

Mr. MARSHALL. The whole time you were Xeroxing?

Ms. POOR. Yes, she was there in the same area as the Xerox machine.

Mr. MARSHALL. Now, did you personally Xerox 20 copies of the entire report or did you simply Xerox a portion of the report?

Ms. POOR. Only a portion of it.

Mr. MARSHALL. Now, how were the copies—excuse me, did you wish to confer?

Did you participate in the collation of the copies, putting them together?

Ms. POOR. I believe I did, yes.

Mr. MARSHALL. Were the copies after they were put together, that is the copies of the select committee's January 19, 1976, report, were they numbered in any way?

Ms. POOR. No, they were not.

Mr. MARSHALL. Was there any identifying characteristic on any of the copies that you knew about?

Ms. POOR. No.

Mr. MARSHALL. By that I mean so you could designate one copy and identify it as opposed to another copy of the same report?

Ms. POOR. No.

Mr. MARSHALL. Was that ever discussed, to your knowledge?

Ms. POOR. I don't remember it being discussed.

Mr. MARSHALL. Now, after the copies were put together, were they distributed to committee members?

Ms. POOR. Yes, they were. But later on that day, after they had been assembled.

Mr. MARSHALL. Who was in charge of the distribution?

Ms. POOR. That was sort of a combined effort. I would say Searle Field and Emily Sheketoff were the people who were organizing us to deliver the reports.

Mr. MARSHALL. Did you take part in the actual delivery of the reports?

Ms. POOR. Yes, I did.

Mr. MARSHALL. To whom did you deliver the reports?

Ms. POOR. I delivered the report to three or four offices. The only one I honestly remember going to was Congressman Johnson's office.

Mr. MARSHALL. Is there any particular reason why you recall that particular report?

Ms. POOR. No.

Mr. MARSHALL. When you delivered the report, or reports to the offices that you delivered them to, were you given any instructions as to how you were to make delivery, to whom you were to make delivery of the January 19 draft?

Ms. POOR. No. We were told to take them to the offices and deliver them and leave them there.

Mr. MARSHALL. Were you given instructions as to whom you were to give them to?

Ms. POOR. No.

Mr. MARSHALL. What was your understanding with regard to to whom you might make delivery?

Ms. POOR. My understanding was that I was to take it to the office, and leave it in the member's office, in his inner office. If the member was there, I would give it directly to the member.

Mr. MARSHALL. And if the member was not there, what were your instructions?

Ms. POOR. I don't recall having any specific instructions. I would go into the office and say, "I have the report" and leave it perhaps on the desk, in the inside office.

Mr. MARSHALL. Is it your testimony, then, that you were simply to use your own judgment in your understanding of what you were to do if the member was not present?

Ms. POOR. I guess so, yes.

Mr. MARSHALL. Now, do you recall, even though you cannot recall the names of members, select committee members, to whom you made distribution, other than Mr. Johnson, do you recall what you did with those drafts to other members? That is, did you deliver them personally to the members you delivered drafts to, or just simply leave it in their offices, or can you recall?

Ms. POOR. I don't remember.

Mr. MARSHALL. At the time you picked up the drafts of the January 19 report for distribution, were you required to sign out in any log or other record that you had received a certain number of copies that were designated to go to a particular Congressman?

Ms. POOR. No, I wasn't.

Mr. MARSHALL. When you made your delivery, and came back to the select committee spaces, were you required to fill out any report, or to sign in that you had made deliveries?

Ms. POOR. No.

Mr. MARSHALL. Were you required to make an oral report to anyone about the delivery that you had made?

Ms. POOR. Not that I recall. I mean if we had had any problem, I guess we would have said that we hadn't delivered it. But we were not required to do anything of that sort.

Mr. MARSHALL. As I understand from your testimony, you were not required to obtain any signatures at the time of delivery?

Ms. POOR. No.

Mr. MARSHALL. Did you make your delivery alone or with some other person?

Ms. POOR. Alone.

Mr. MARSHALL. Was it your understanding this was the method of delivery as to the other select committee members, that is, the ones you did not physically deliver copies to?

Ms. POOR. I assumed so.

Mr. MARSHALL. Do you recall who else was going to make deliveries besides yourself?

Ms. POOR. The people that were there at the time making deliveries, I believe, were Susan Paisner and John Burke, and I don't know if anybody else took copies or not.

Mr. MARSHALL. With regard to the drafts of the report, January 19 report, that you delivered, were they in sealed envelopes, or otherwise enclosed?

Ms. POOR. They—there were two volumes with each report, and they were in black binders. And that was all.

Mr. MARSHALL. The black binders were not themselves enclosed in an envelope?

Ms. POOR. No, they were not.

Mr. MARSHALL. Was there a cover letter?

Ms. POOR. Yes.

Mr. MARSHALL. Accompanying the binders?

Ms. POOR. Yes, there was.

Mr. MARSHALL. Did you read the cover letter?

Ms. POOR. Yes, I did read it. I don't remember what it said, exactly.

Mr. MARSHALL. Was this a letter signed by Mr. Field?

Ms. POOR. Yes, it was.

Mr. MARSHALL. Dated January 19?

Ms. POOR. I am not sure of the exact date.

Mr. MARSHALL. Now, with regard to any changes that were made in the January 19, 1976 draft, how were they handled for purposes of distribution?

Ms. POOR. Well, the committee started to hold hearings on the 20th about the report. And changes that were made—for instance, in the morning session, we would start making those changes, typing those changes perhaps during lunch, and then changes that were made in the afternoon session, we would work on that afternoon.

Mr. MARSHALL. And how would those changes physically be distributed to the members?

Ms. POOR. Sometimes they were taken to the committee rooms—to the committee room for the next hearing. I believe occasionally they were also taken to members' offices, directly to the offices.

Mr. MARSHALL. Did you take part in the distribution of changes?

Ms. POOR. I did. I remember at one point—and I am not sure the date of this at all—taking a page with a change in it again to Congressman Johnson's office, then also on Saturday the 24th I had taken a copy of the book, of the final report, up to Congressman Treen's office.

Mr. MARSHALL. Do you recall whether you delivered those personally that day to Mr. Johnson and Mr. Treen, or did you leave that at the offices?

Ms. POOR. Mr. Johnson's, I again left it at his office. I replaced the pages and took out the ones that were to go back to the committee room. And I delivered Mr. Treen's to him directly.

Mr. MARSHALL. Were there other members of the select committee that you made distributional changes to?

Ms. POOR. I—you mean in their offices? I don't remember particular changes that I made for any individual, no.

Mr. MARSHALL. Mr. Chairman, I have talked with this witness beforehand. In my judgment at this point it would be appropriate for the committee to entertain a motion to go into executive session.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5), I move that we go into executive session at this time.

Mr. FLYNT. This is a motion which must be made in open session with a quorum being present. It is a motion on which a recorded rollcall vote must be taken. The question is, shall the committee now go into executive session. I will ask the staff director to call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

[No response.]

Mr. SWANNER. Mr. Quillen.

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley.

[No response.]

Mr. SWANNER. Mr. Mitchell.

[No response.]

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, 7 members answer aye, 5 members absent, not voting.

Mr. FLYNT. On this vote, by record vote, the yeas are seven, the nays are none. A quorum of the committee being present, a majority of the quorum having voted to go into executive session, the committee now resolves itself into executive session and will reconvene immediately in the adjoining room.

[Whereupon, at 2:03 p.m., the committee proceeded in executive session.]

Mr. FLYNT. The committee will come to order.

The committee is in open session.

A quorum is present for the purpose of hearing testimony and receiving evidence.

Mr. Marshall?

Mr. MARSHALL. Ms. Poor, did you have any portion of your earlier public testimony which you wished to correct?

Ms. POOR. Yes. I just wanted to say that as far as xeroxing copies of the report, I don't think there were more than 20 or 30 pages that I actually xeroxed, and, when we were getting the report ready. I would like to clarify that.

And also in the other material I have that you requested to see, you wanted to see, there is a portion of that, a paragraph that is classified material, that is based on classified material, it itself is not.

Mr. MARSHALL. When you say it's based on classified material, do you have a paragraph that you refer to which was drawn from a classified document?

Ms. POOR. Yes.

Mr. MARSHALL. Is the paragraph that you yourself have classified, or does it simply come from a classified document?

Ms. POOR. No, it came from a classified document.

Mr. MARSHALL. The paragraph you yourself have is not classified?

Ms. POOR. No.

Mr. BENNETT. Well, by way of clearing the record here, I think she is not making an accurate statement because there wasn't any way to declassify, so it came from a classified document, so it was classified.

She had no way to declassify it, and neither did Members of Congress have a way to declassify. They can make it public, but they cannot declassify it.

I mean maybe I am wrong. I don't know of any procedure for a Member of Congress to declassify. He can make it public.

Mr. MARSHALL. I think the Member is correct. What I am trying to distinguish, though, is putting aside for a moment the rule that anything in a classified document is, per se, classified. I am trying to determine from the witness whether the matter she had was the information which brought about or provoked the security classification of the original document.

Mr. BENNETT. I don't believe she would be in a position to pass on that.

Mr. MARSHALL. I don't know whether she would or not.

Mr. BENNETT. I would like to further interrogate her because she had some knowledge or ability to find out about classified documents, if she knows a paragraph is not classified in a classified document, so I don't think she will say that. You are not saying to us that you have any special knowledge that makes this particular paragraph non-sensitive?

Ms. POOR. No, Mr. Bennett, I am not.

Mr. BENNETT. That is my understanding of the law about classifications.

Mr. MARSHALL. Are you through?

Mr. GREENBERG. We are through.

Mr. BENNETT. I am through.

Mr. MARSHALL. I was referring to counsel, not you, Mr. Bennett, although if you have any further questions?

Mr. BENNETT. I don't want to be argumentative, but it is a rule you can't just take out material and you can't just set aside from that because she doesn't have, and I don't have, nobody in this room has, the ability to declassify a paragraph out of a classified document.

Ms. POOR. My instructions at that time were to draw up this memorandum, which is what I was doing. When I was done with it I gave it to Aaron Donner to read. He knew the part in that one paragraph had the classified information in it. I was under no instruction as to that material itself.

Mr. MARSHALL. How did you happen to retain this particular paragraph?

Ms. POOR. I originally got it from—well, I am not sure. What do you mean exactly?

Mr. MARSHALL. Well, you say you had in the memorandums in your possession one paragraph that came from a classified document. The question is how did you happen to have it in your possession? That is, how does it enter into the memorandum?

Ms. POOR. It is a document that was kept in the safes in the committee.

Mr. MARSHALL. Yes, but what I want to know is how you happened to have it in your possession?

Ms. POOR. I don't—I don't have the whole document.

Mr. MARSHALL. But you have this paragraph?

Ms. POOR. I have a memorandum I wrote.

Mr. MARSHALL. The question is did you simply take a copy of the memorandums home with you?

Ms. POOR. Yes.

Mr. MARSHALL. And you retained it after your duties at the select committee had been discharged. Is that correct?

Ms. POOR. Yes.

Mr. MARSHALL. Now, going back to the distribution—do you have anything else?

Ms. POOR. I should say I was never asked for it back either, the memorandum I drew up.

Mr. MARSHALL. Going back to the distribution of the January 19, 1976, draft with the changes that we were talking about at the time we went from public session into executive session, when you carried the changes from the January 19, 1976, draft to the various offices of the members of the select committee, did you yourself make the physical changes in the January 19 draft in the offices you visited or did you simply hand the changes to someone in the office to be made?

Ms. POOR. No, if I brought a change to the office, I removed the page that was to come out and replaced it with the proper page.

Mr. MARSHALL. Then what did you do with the old pages? That is the pages you removed?

Ms. POOR. I brought that back and gave it to Emily Sheketoff.

Mr. MARSHALL. Now, was there any statement or record that you had to keep of the old pages that you were bringing back to the office?

Ms. POOR. I did nothing of that sort, no.

Mr. MARSHALL. You did not have to report to anyone?

Ms. POOR. I can't—I had to come back to Miss Sheketoff and give her the page. It was not my responsibility to keep track of which pages had been changed.

Mr. MARSHALL. You did not have to identify to Miss Sheketoff which pages you were giving back to her, coming from a particular member's copy?

Ms. POOR. No, I handed back to her the change I had made, that is all.

Mr. MARSHALL. But you did not have to identify that change as having been taken from a particular member's copy?

Ms. POOR. I am sure I came back and mentioned to her that this page had been changed from a certain Congressman's book. There was no system whereby I would come back and say this change has been completed.

Mr. MARSHALL. Now, with regard to the January 19, 1976, draft of the select committee's report, how many copies were made for distribution, do you know?

Ms. POOR. There were 20 copies made.

Mr. MARSHALL. All right. Now how many of those copies went to members?

Ms. POOR. Thirteen.

Mr. MARSHALL. Was there any distribution of that draft to the CIA?

Ms. POOR. I believe that one copy went to the CIA, yes.

Mr. MARSHALL. That leaves then six remaining copies?

Ms. POOR. Yes.

Mr. MARSHALL. Now, what was done with those six copies?

Ms. POOR. They were kept in the committee staff room, they were kept in the safes in the back. And they were usually brought up to committee hearings during the following week as changes were made in the report.

Mr. MARSHALL. Were those copies numbered?

Ms. POOR. No; they weren't.

Mr. MARSHALL. Was there ever any accounting for those copies, so far as you know?

Ms. POOR. Nothing formal. They were counted. In the beginning of the week there was more of an effort to keep track of them, but by the middle of the week there was not that much of an effort made anymore.

Mr. MARSHALL. Who was in charge of taking those copies from the safe and bringing them up to hearings and then bringing them back?

Ms. POOR. The people who worked back there were the ones that actually carried them upstairs. I did that, as did Susan Paisner and John Burke. We all carried them up and anybody going up to the committee room might have taken a book up there. I was instructed to do that either by Emily Shekatoff or Jackie Hess.

Mr. MARSHALL. During the time you actually carried the drafts, six drafts from one place, from the safes to any other place they were needed, did you ever determine there were less than six present?

Ms. POOR. I don't recall ever counting before one of those hearings to find out how many there were exactly.

Mr. MARSHALL. So, you really cannot testify of your own knowledge how many were actually present at any given time?

Ms. POOR. That is true.

Mr. MARSHALL. Ms. Poor, Mr. Daniel Schorr stated in an article in Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976. Did you give this report or a draft of the report, or any draft of the select committee to Mr. Schorr or any other person?

Ms. POOR. No; I did not.

Mr. MARSHALL. Now, do you know anyone who did?

Ms. POOR. No; I don't.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee report or any part of the report or any draft of the report?

Ms. POOR. No.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. POOR. No; I don't.

Mr. MARSHALL. Did you give the report or a draft of the report or make any part of the report available to anyone outside of the Select Committee on Intelligence?

Ms. POOR. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Ms. POOR. No.

Mr. MARSHALL. That completes my questions, Mr. Chairman.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Yes; would the counsel yield on the answer to that question a moment ago? When you said outside of the committee, she had testified prior to that statement that she delivered copies outside of the committee room to members' offices.

Mr. MARSHALL. Well, the question was did she give the report or make any part of the report or a draft available to anyone outside of the Select Committee on Intelligence.

Mr. QUILLEN. You mean outside of the membership?

Mr. MARSHALL. Yes, sir.

Mr. QUILLEN. I wanted to clarify that.

Mr. Chairman, I have no questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. There are no further questions to be asked of you, Ms. Poor, and we wish to express the thanks of the committee to you and your counsel for appearing here before us and for the testimony which you have given to the committee.

You may step down.

Ms. POOR. Thank you.

Mr. MARSHALL. Sandra A. Zeune to the witness stand.

Mr. FLYNT. You are accompanied by counsel, Ms. Zeune?

Ms. ZEUNE. Yes, sir.

Mr. FLYNT. In just a moment we will identify counsel. Would you please rise to be sworn?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. ZEUNE. I do.

TESTIMONY OF SANDRA A. ZEUNE, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY STEPHEN J. KOVACIK, JR., COUNSEL

Mr. FLYNT. Mr. Marshall.

Mr. MARSHALL. Would you state your name for the record?

Ms. ZEUNE. Sandra A. Zeune.

Mr. MARSHALL. And you are appearing here at the invitation of the committee?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Would you have your counsel identify himself for the record?

Mr. KOVACIK. My name is Stephen J. Kovacik, Jr.

Mr. FLYNT. Of the District of Columbia?

Mr. KOVACIK. No, sir; I am from Columbus, Ohio.

Mr. FLYNT. Thank you, sir. We welcome you before the committee.

Mr. KOVACIK. Thank you. It's an honor and privilege, sir. Thank you.

Mr. MARSHALL. Miss Zeune, prior to the hearing you received copies of Resolution 1042 and 1054.

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. As well as copies of the rules of the committee?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Plus a copy of the investigation procedures adopted by the committee.

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. And a copy of Chairman Flynt's opening statement?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee at this time?

Ms. ZEUNE. No.

Mr. MARSHALL. Do you have an oral statement which you wish to make to the committee at this time?

Ms. ZEUNE. No.

Mr. MARSHALL. Have you produced through the committee staff all documents in your possession concerning the Select Committee on Intelligence?

Ms. ZEUNE. Documents that I took home from the committee?

Mr. MARSHALL. Yes.

Ms. ZEUNE. No, sir. I have not produced those documents.

Mr. MARSHALL. All right. Do you have those documents with you now?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. All right, are you willing to allow the committee to look at them?

Ms. ZEUNE. I will allow the committee to look at the documents that I brought home from the committee. I would prefer not to supply personal notes that I may have taken.

Mr. MARSHALL. May a member of the committee staff now look at the documents you are now willing to let the committee look at?

Ms. ZEUNE. Certainly.

Mr. MARSHALL. With regard to what you refer to as your personal notes, were those notes dealing with personalities on either the select committee staff or the select committee members themselves, or what?

Ms. ZEUNE. I would say so; yes.

Mr. BENNETT. Say what?

Mr. MARSHALL. She would say so; yes.

Is there anything in those personal notes other than your personal comments or views, or personal information about people involved in the select committee's work?

Ms. ZEUNE. No, sir; personal comments only.

Mr. MARSHALL. And dealing only with the people?

Ms. ZEUNE. Yes, sir.

Mr. BENNETT. Would the gentleman yield?

Mr. MARSHALL. Yes.

Mr. BENNETT. I assume from what you have said that nothing in these personal notes would throw any light upon where the leak occurred?

Ms. ZEUNE. No, sir.

Mr. FLYNT. We will reserve ruling on the requirement for additional papers and documents until further questions have been asked, at which time the Chair will make a ruling.

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Now, in the event that your evidence or testimony may involve any information on or data concerning an executive session of the Select Committee on Intelligence or classified information, or evidence which may tend to defame, degrade, or incriminate any person, please advise this committee in a timely fashion so it may take appropriate action, under the Rules of the House of Representatives.

Ms. ZEUNE. Fine.

Mr. MARSHALL. Ms. Zeune, when did you join the Select Committee on Intelligence staff?

Ms. ZEUNE. June 15, 1975.

Mr. MARSHALL. And when did your duties terminate?

Ms. ZEUNE. May 5, 1976.

Mr. MARSHALL. Could you outline for us briefly your job title and describe your duties on the staff?

Ms. ZEUNE. I was hired as a researcher on June 15 and in August I was promoted to investigator and I worked exclusively with the CIA.

Mr. MARSHALL. Did you, in working exclusively with the CIA, did that require you to contact a particular person at the CIA or did your contacts range over a number of persons in the CIA?

Ms. ZEUNE. There was a general understanding that if we wanted interviews or documents we were to make a written request or a verbal request by phone to the review staff, on occasion we would deal directly with future witnesses or people we were going to interview; yes.

Mr. MARSHALL. Was this a review staff of CIA that you made the request of?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Now, with regard to persons that you wished to interview or documents that you wished to examine, were you the one who decided or selected those persons and documents, or were you simply following instructions of someone else?

Ms. ZEUNE. Usually I would decide.

Mr. MARSHALL. And what would be the basis for your decision; that is, how would you identify a particular person or document that you wanted to look at?

Ms. ZEUNE. We usually knew who we wanted to interview just by their job title; if we just wanted to talk to them, the witnesses were selected among the people, of course, that we had talked to. In terms of documents, after interviewing people you could, usually, have a general idea of what they have available, and quite frankly, sometimes you would take a stab at it and hope they had something or at least hope they would supply it if they had it.

Mr. MARSHALL. With regard to documents which you looked at, did these documents contain classified information?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Now would you view these documents within the select committee spaces or did you go to CIA to look at them?

Ms. ZEUNE. Both.

Mr. MARSHALL. On the instances where you went to CIA to look at the documents, what security procedures did you have to undergo in order to have access to the documents?

Ms. ZEUNE. Once the documents were made available at the agency?

Mr. MARSHALL. Yes; what did you have to do in order to look at the documents at the agency?

Ms. ZEUNE. We were generally put in a reading room, sometimes there was someone with us from the agency, sometimes there wasn't. We were just given access to the documents and told whether or not we could take notes, whether or not we could take names, et cetera.

Mr. MARSHALL. I take it then the condition of taking notes and taking names varied depending upon the document you were looking at.

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Did you have to sign for the documents in any way?

Ms. ZEUNE. Just to review it at the agency?

Mr. MARSHALL. Yes.

Ms. ZEUNE. No, sir.

Mr. MARSHALL. Now, are you familiar with something called the Jackson memorandum?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Was this memorandum mentioned in a document which you looked at at CIA?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Would you tell us, did you make a copy of the information in the Jackson memorandum?

Ms. ZEUNE. A Xerox copy?

Mr. MARSHALL. No, ma'am, a note copy, hand-written copy.

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. And when you looked at that particular document, were any restrictions put on you as to what you could or could not do with the documents?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. What were those restrictions?

Ms. ZEUNE. I was informed that the documents that they had given me, which was a set of files regarding a particular subject, were raw files, they were not sanitized in any way, I could take notes but I could not take names.

Mr. MARSHALL. Now, could you elaborate on what you actually understood was meant by you could take notes but not take names?

Ms. ZEUNE. The files which were given me contained both real names and cover names, and code names. And it was my understanding that I could take notes but I was to write down no names.

Mr. MARSHALL. Did you follow those instructions?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Now, with regard to the Jackson memorandum, do you recall when this occurred, that is when you made those notes?

Ms. ZEUNE. I believe it was the first or second week in December of 1975.

Mr. MARSHALL. Now, when you returned back to the select committee spaces, did you report those notes that you made from the Jackson memorandum to any person?

Ms. ZEUNE. I typed the notes up, and distributed a copy, I believe, to Mr. Donner, who was the counsel, Mr. Field, the staff director, and supplied an extra copy to Mr. Donner for the chairman.

Mr. MARSHALL. Did you go over to CIA to look for the information in the Jackson memorandum or was that something you simply came upon while pursuing other information?

Ms. ZEUNE. I was not looking for it, no, sir.

Mr. MARSHALL. It came as a surprise to you?

Ms. ZEUNE. Very much so.

Mr. MARSHALL. Did you advise anyone at CIA that you were making copies of the information that you did copy?

Ms. ZEUNE. No, sir. Wait—pertaining only to the Jackson memo?

Mr. MARSHALL. Yes, ma'am.

Ms. ZEUNE. No, sir. Can I clear that up? When they gave me access to the files I was permitted to take notes on anything in those files as long as I did not take names.

Mr. MARSHALL. Did anyone inspect your notes that you took on this particular occasion to determine if you had followed the instructions you were given about taking notes, but not taking names?

Ms. ZEUNE. No, sir, I never had my notes inspected on any occasion.

Mr. MARSHALL. Did you ever even have to show your notes to anyone at CIA to determine if you were following instructions at any time?

Ms. ZEUNE. No, sir.

Mr. MARSHALL. They simply left that up to your individual judgment, is that right?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Now, did you have responsibility for delivering a draft of the select committee's report to any member of the select committee?

Ms. ZEUNE. First draft?

Mr. MARSHALL. Yes, ma'am.

Ms. ZEUNE. I really don't recall. I would imagine so.

Mr. MARSHALL. Do you recall delivering any final draft or changes between the first draft and the final draft to any select committee member?

Ms. ZEUNE. I recall one draft, it may have been the final draft, I don't know, to Congressman James Stanton, Congressman Dellums, and Congressman Aspin, at their offices.

Mr. MARSHALL. At their offices?

Ms. ZEUNE. At their offices.

Mr. MARSHALL. But you don't recall whether this was the January 19 or first draft?

Ms. ZEUNE. No, sir.

Mr. MARSHALL. Do you recall the day of the week that you made the delivery?

Ms. ZEUNE. No, sir, I am sorry.

Mr. MARSHALL. From whom did you get the drafts in order to make the delivery?

Ms. ZEUNE. On our staff?

Mr. MARSHALL. Yes, Ma'am.

Ms. ZEUNE. I would imagine once they were correlated they were usually stacked up in the security area, they each had a tag on them who they were to go to, several persons grabbed three or four and off they went.

Mr. MARSHALL. But, you don't recall whether one person was in charge of passing them out to you to make delivery?

Ms. ZEUNE. Not specifically, no, sir.

Mr. MARSHALL. You just simply went in and got the number of drafts you were supposed to make delivery on and made the delivery, is that right?

Ms. ZEUNE. I would imagine that we were told that the drafts were ready to be delivered and they asked if anyone would do it, and, of course, several of us volunteered.

Mr. MARSHALL. When you say you would imagine, it is your testimony you don't recall specifically one way or another?

Ms. ZEUNE. No, sir.

Mr. MARSHALL. That is, you do not recall?

Ms. ZEUNE. I do not recall.

Mr. MARSHALL. All right. Now, with regard to the deliveries that you made to Mr. Stanton, Mr. Dellums, and Mr. Aspin, did you make personal delivery to each of those Representatives or did you make some other form of delivery?

Ms. ZEUNE. I don't believe I delivered any of the drafts to the Congressman personally.

Mr. MARSHALL. Do you recall to whom you delivered the drafts?

Ms. ZEUNE. No, sir, I do not. I am sorry.

Mr. MARSHALL. Do you recall whether you delivered them to a person in one of those offices or did you simply leave the draft with the offices?

Ms. ZEUNE. I don't recall specifically. I doubt that I would have just laid it on the desk and left.

Mr. KOVACIK. Excuse me, sir, can we clarify whether or not what her instructions were as to the delivery of these drafts?

Mr. MARSHALL. Be happy to have her clarify that.

Mr. KOVACIK. Thank you. For the benefit of the committee, what were your instructions as to delivery, were you instructed to deliver them personally to the Congressman or his office?

Ms. ZEUNE. No, sir, no, sir; deliver them to the office.

Mr. KOVACIK. Thank you, sir.

Mr. MARSHALL. Were you given any more specific instructions than that; simply to deliver to the offices.

Ms. ZEUNE. No, sir.

Mr. MARSHALL. You were not required to get any signatures?

Ms. ZEUNE. No, sir.

Mr. BENNETT. Can I interrupt there? I am not really quite clear about what you remember and don't remember about the stack of drafts. I get the impression that perhaps you do remember that there was a stack of these reports, and that they were labeled in some way to go to specific offices, and that you do remember that you were not told to get any particular ones, but were instead told to pick up whatever you could appropriately deliver.

Ms. ZEUNE. That is correct.

Mr. BENNETT. That is correct?

Ms. ZEUNE. Yes.

Mr. MARSHALL. Do you recall delivering Mr. Dellums' copy specifically?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Where did you deliver that copy specifically?

Mr. ZEUNE. I believe it was given to the receptionist in his office with the understanding that Congressman Dellums would receive the copy.

Mr. MARSHALL. At the time you gave that copy to the receptionist in Congressman Dellums' office, was the copy sealed in an envelope?

Ms. ZEUNE. No, sir.

Mr. MARSHALL. Was it just simply in the black binders?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Did you give her any instructions as to how she was to safeguard that copy until it was delivered personally to Congressman Dellums?

Ms. ZEUNE. No, sir, I made it clear to her what it was exactly, and she seemed under the impression that she understood that it was to go to the Congressman.

Mr. MARSHALL. Do you recall making delivery of any copy of the select committee's report or a draft of the report in the horseshoe of the Rayburn Building?

Ms. ZEUNE. No, sir.

Mr. MARSHALL. Going back to the notes you described that you took at CIA on reviewing some of the documents and referring specifically to the Jackson memorandum, did those notes include names of persons?

Ms. ZEUNE. At the time I took them?

Mr. MARSHALL. Yes, Ma'am.

Ms. ZEUNE. No.

Mr. MARSHALL. Did you later supply the names?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. How did that come about? Did you simply go back to your office and fill in the names?

Ms. ZEUNE. Before I left the agency I went back through the memorandum, memorized the names and places where they went, and filled them in at the committee offices, that is correct.

Mr. MARSHALL. Had you used this memorization of names on other occasions when you looked at the CIA documents under which you had certain restrictions?

Ms. ZEUNE. I don't recall ever using it intentionally as I did at that time, no, sir.

Mr. MARSHALL. What was the reason for you doing it intentionally at that time?

Ms. ZEUNE. First of all, of course, I knew it would be something that both the committee and the staff would be interested in, the staff meaning Mr. Field and Mr. Donner certainly. I was interested in it myself in that it proved, or I shouldn't say proved, it was another bit of evidence of what the committee was trying to prove.

Mr. MARSHALL. What was the committee trying to prove?

Ms. ZEUNE. I should not have said trying to prove. It was another instance where the Congress had served to protect the intelligence community.

Mr. MARSHALL. I am not sure I understood your last answer. Could you repeat it for me?

Ms. ZEUNE. You mean you didn't hear it or you didn't understand it?

Mr. MARSHALL. I didn't quite hear it, and whether I understand it or not, would you speak up just a bit?

Ms. ZEUNE. Sure. The committee—may I make a brief statement?

Mr. MARSHALL. Certainly.

Ms. ZEUNE. It was the committee's contention that for years the Congress had served to not only oversee the intelligence community but to somewhat protect it. When I saw the memorandum and that was

not the only memorandum in the file, when I saw the group of memorandums it served as another bit of evidence of what the committee's contention was. That was my primary interest.

Mr. MARSHALL. Now, what is the source of information that you have concerning the committee contention as you have just stated that contention to be?

Ms. ZEUNE. Mr. Marshall, I would say first of all the committee's resolution, but just having worked for the committee for 6 months at that time.

Mr. MARSHALL. That was your understanding then based upon the initial resolution as well as your experience with the committee?

Ms. ZEUNE. Absolutely.

Mr. MARSHALL. Now, when you made the notes concerning the Jackson memorandum, did you make a verbatim longhand copy of the memorandum leaving out the names as you have testified?

Mr. ZEUNE. Not 100 percent, no, sir.

Mr. MARSHALL. Did you judge it to be a complete copy?

Ms. ZEUNE. Yes, sir.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976. Did you give the select committee's report or a draft of the report or any part of the select committee's report or a draft to Schorr or any other person?

Ms. ZEUNE. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. ZEUNE. By that do you mean do I have factual evidence? My answer to that would be no. I do not have factual evidence.

Mr. MARSHALL. Do you have any evidence whatsoever?

Ms. ZEUNE. No, sir, no evidence.

Mr. MARSHALL. Well, I am intrigued by your description of evidence as factual, and I don't mean to dispart with you, but I am trying to ask you if you have any information whatsoever concerning how Mr. Daniel Schorr obtained a draft of the select committee's report or any part of the text of that report?

Ms. ZEUNE. I have no firsthand knowledge, no, sir.

Mr. MARSHALL. How about secondhand or secondary information?

Mr. KOVACIK. Are you speaking of hearsay or something like that?

Mr. MARSHALL. I am speaking of any kind of information, whether it meets the rules of evidence, any information whatsoever. Any shreds, no matter how remote or no matter how farfetched.

Ms. ZEUNE. Mr. Marshall, sure, as everyone would testify, for many months there has been speculation and hearsay galore. I could really not in good conscience attest to anything I have heard.

Mr. BENNETT. Could I ask a question at this point? I find a little inconsistency. I don't think you meant to do it, but you said you didn't copy the memorandum 100 percent, and then counsel asked you whether you took it to be a complete copy and you said yes, and of course, those two answers are inconsistent.

Ms. ZEUNE. By verbatim, no, sir. There would have been 2 or 3 sentences that I would have left out.

Mr. BENNETT. Substantially complete?

Ms. ZEUNE. Yes, sir.

Mr. BENNETT. I understand.

Mr. QUILLEN. Well, Mr. Chairman, go ahead.

Mr. FLYNT. No go ahead. I was going to recess until we can vote.

Mr. QUILLEN. Just one statement, and I admit I did not have an opportunity to come back immediately. When you were saying the purpose of the committee and then later changed it, do you mean to tell me that the staff members were brainwashed as to what they were going to do in the committee, the purpose of the committee was to disprove something?

Ms. ZEUNE. I certainly wouldn't use the word brainwash, sir.

Mr. QUILLEN. That is my word, not yours.

Ms. ZEUNE. It was a facet of the committee's investigation, yes.

Mr. QUILLEN. To do what, to prove what?

Ms. ZEUNE. To, perhaps I should not have used the word prove.

Mr. QUILLEN. You struck that and I can accept that.

Ms. ZEUNE. OK, it was certainly my understanding that a facet of the committee's investigation would be the lack of congressional oversight in the past.

Mr. QUILLEN. And that lack of congressional oversight was going to be exercised by the committee in a corrective fashion?

Ms. ZEUNE. We certainly hoped to make an effort for better congressional oversight, yes, sir.

Mr. QUILLEN. I won't pursue this now, Mr. Chairman. Thank you.

Mr. FLYNT. The bells have sounded indicating that a recorded vote is in progress on the Floor of the House of Representatives. I suggest that we stand in recess until we vote, and I would like to urge every member of the committee to return as soon as he has voted.

[A short recess was taken.]

Mr. FLYNT. The committee will come to order.

The Chair observes that a quorum is present.

I recognize the gentleman from South Carolina.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5), I move that we go into executive session at this time.

Mr. FLYNT. You have heard the motion. This is a motion which must be made in open session with a quorum of the committee present.

Under the rules, a recorded vote is required.

The question is, Shall the committee now go into executive session. The staff director will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

[No response.]

Mr. SWANNER. Mr. Quillen.

[No response.]

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley.

[No response.]

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, seven members vote "aye," no members vote "no," five members absent, not voting.

Mr. FLYNT. On this vote by rollcall, the yeas are seven, the nays are none. A quorum being present, and a majority of the quorum having voted in favor of the motion, the committee now resolves itself into executive session, which will convene in the adjoining room.

[Whereupon, at 4:05 p.m. the committee went into executive session.]

Mr. FLYNT. Before closing the meeting today, let me express on behalf of the committee the committee's thanks to Ms. Zeune and to Mr. Kovacik.

We thank you for your cooperation and for the information which you have given to this committee. You are not under subpoena, are you?

Ms. ZEUNE. No.

Mr. FLYNT. With the thanks of the committee, you may be excused. The committee does not anticipate it at this time, but in the event it should be necessary to recall you, we will make every effort to do it at a time absolutely convenient to you.

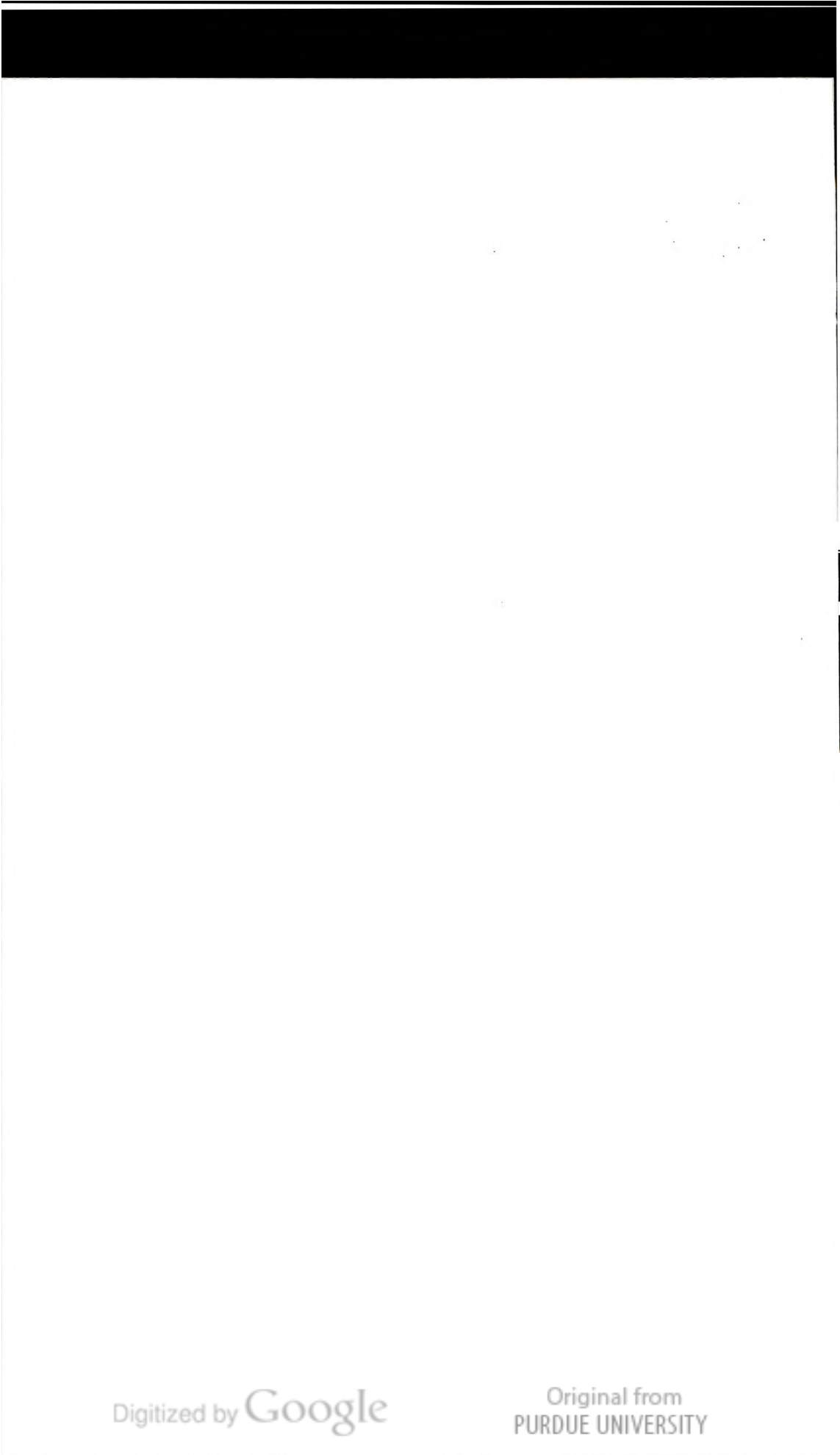
Ms. ZEUNE. Thank you.

Mr. FLYNT. Without objection, the committee stands adjourned until 10 o'clock tomorrow morning.

Let the record show that the meeting which is to be convened at 10 o'clock tomorrow morning might, under the rules of the democratic caucus, have to be delayed. The Chair will seek permission by unanimous consent of the democratic caucus for us to meet while the caucus is in session. If that unanimous consent is granted, the meeting will begin promptly at 10. If that unanimous consent is not granted, there may be a delay in proceeding. But the present plans are for the committee to reconvene at 10 o'clock tomorrow morning.

The committee stands adjourned.

[Whereupon at 4:45 p.m. the committee adjourned to reconvene at 10 a.m., Tuesday, July 27, 1976.]



INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

TUESDAY, JULY 27, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also Present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, Miss Jan Loughry, staff members; Robert Carr, associate counsel.

Mr. FLYNT. The committee will come to order.

There is a quorum present for the purpose of taking testimony and receiving evidence.

Miss Andrade, would you please rise and take the oath?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Miss ANDRADE. Yes, sir.

TESTIMONY OF CAROLYN M. ANDRADE, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY MARTIN STERENBUCH, COUNSEL

Mr. FLYNT. Thank you, and you may be seated.

Mr. Marshall?

Mr. MARSHALL. Miss Andrade, would you state your full name and residence for the record, please.

Miss ANDRADE. Miss Carolyn M. Andrade, 1334 31st Street, Northwest, Washington, D.C. 20007.

Mr. MARSHALL. Would you speak up just a bit, please.

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. Are you appearing here at the invitation of the committee?

Miss ANDRADE. Yes, sir, I am.

Mr. MARSHALL. Are you appearing with counsel?

Miss ANDRADE. Yes, I am.

Mr. MARSHALL. Would you have him identify himself.

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Mr. STERENBUCH. Martin Sterenbuch.

Mr. MARSHALL. And with what firm are you?

Mr. STERENBUCH. Gajarsa, Liss & Sterenbuch in Washington, D.C.

Mr. MARSHALL. Miss Andrade, prior to the hearing you received copies of House Resolution 1042 and 1054 as well as the rules of this committee, investigative procedures adopted by this committee, and a copy of Chairman Flynt's opening statement; is that correct?

Miss ANDRADE. Yes, I have.

Mr. MARSHALL. Do you have a written statement you wish to file with this committee at this time?

Miss ANDRADE. No, I do not.

Mr. MARSHALL. Do you wish to present a brief oral statement to the committee at this time?

Miss ANDRADE. No, sir.

Mr. MARSHALL. Have you turned over to the staff of this committee any document which you had in your possession which related to the work of the House Select Committee on Intelligence?

Miss ANDRADE. I never had any except what I turned in before we closed down.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the select committee, that is, nonpublic session, or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate and timely action under the rules of the House of Representatives.

Is that agreeable?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. Miss Andrade, as I understand it, you were the office manager for the Select Committee on Intelligence; is that correct?

Miss ANDRADE. I was administrative assistant.

Mr. MARSHALL. Could you tell me what those duties involved?

Miss ANDRADE. Well, it involved setting up the office, getting all the paperwork together, getting with the House Administration Committee, getting all the forms; then interviewing personnel to help set up the place, getting the proper office, getting us moved, the lease of equipment; then attending all the hearings, getting a hearing room for us, taking care of the payroll and the vouchers and the travel; just general office duties and then management of the jobs as they were assigned.

Mr. MARSHALL. When did you come to the select committee to undertake those duties?

Miss ANDRADE. I first came when Mr. Nedzi was chairman in April and we were located in the Cannon Building.

Mr. MARSHALL. That would have been 1975?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. And when did you terminate your duties with the select committee?

Miss ANDRADE. March 31.

Mr. MARSHALL. 1976?

Miss ANDRADE. 1976.

Mr. MARSHALL. And you were an administrative assistant all during that period of time?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. To whom did you report?

Miss ANDRADE. Searle Field and the chairman.

Mr. MARSHALL. Did your work at all involve the handling of classified information?

Miss ANDRADE. Not to my extent that I had to sign out for secure data. There were times when we had a rush of typing and I helped with tapes or I helped with just typing of materials that were being prepared for the committee, for the various staff people who were going to use that material here.

Mr. MARSHALL. Did any part of your duties require you to take care of the security of classified information, that is, to lock the documents that were classified up in the safes or to check the safes to see that they were secure at the close of the day's work, that sort of thing?

Miss ANDRADE. No, sir, it did not.

Mr. MARSHALL. Did you have a security classification clearance?

Miss ANDRADE. Yes, I did.

Mr. MARSHALL. What was that?

Miss ANDRADE. It was top secret.

Mr. MARSHALL. Had you had any experience in dealing with security or classified information before this job?

Miss ANDRADE. Yes, sir.

The first job I had in Washington was G-2 headquarters. That was the very first one, about 1944, I believe. I was with the Watergate Committee under Senator Ervin and I set up that one.

Mr. MARSHALL. Could you explain for us very generally what the office setup was? We understand that Mr. Field was the staff director. Could you tell us what the office organization was for the select committee?

Miss ANDRADE. Mr. Field was the staff director and chief counsel and Aaron Donner was general counsel, and then we had some counsels in charge of the FBI investigation, other counsels in charge of CIA, and some domestic area. We had investigators. I think there were only three or four, and they would be assigned to the various areas where one of the counsel needed to help.

Mr. MARSHALL. I can't quite hear.

Miss ANDRADE. The investigators were then assigned to whichever counsels were working in a particular area for hearings each week or every few days as time called for them. We had nine, I believe nine, researchers that worked in the back with secure documents to pull data that was necessary. We had three secretaries. And we sat in B-316, all in one office divided by the temporary partitions.

A policeman sat at the door and the security for up front was only so that no one went beyond the policeman that wasn't supposed to be in the office.

Mr. MARSHALL. You, I believe, testified earlier that you had no direct dealings with classified information except insofar as you were required to assist in typing during time pressure situations?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. Do you have any knowledge of any records that were kept concerning distribution of the select committee's report of January 19, 1976, the draft of that report?

Miss ANDRADE. No, sir.

Mr. MARSHALL. Do you know who would have been responsible for keeping such records, if there are any?

Miss ANDRADE. Jackie Hess, if she kept a record of distribution.

Mr. MARSHALL. And what was her job?

Miss ANDRADE. She was security clerk.

Mr. MARSHALL. But you had no knowledge one way or another as to whether she kept a record?

Miss ANDRADE. No, I do not.

Mr. MARSHALL. During the course of the select committee's work was it necessary to discipline any member of the staff of the select committee by reason of an alleged security violation or lack of care for classified materials to your knowledge?

Miss ANDRADE. Not that I saw.

Mr. MARSHALL. During the course of the select committee's work was there any investigation, to your knowledge, into alleged leaks of classified information from the select committee or from the staff?

Miss ANDRADE. No.

Mr. MARSHALL. Your job by and large required you to be in the select committee's spaces from the time work began in the morning until the office closed at night, did it not?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. Would this be true 5 days a week and sometimes 7 days a week?

Miss ANDRADE. Yes.

Mr. MARSHALL. Did you, at any time, see any media persons, that is, newspapermen, TV people, whatever, within the committee spaces past the point where there was a security guard signing people in and out?

Miss ANDRADE. No, I did not. I never let them beyond the policeman.

Mr. MARSHALL. Did you ever see anybody beyond the policeman who regardless of how they got in were in fact there?

Miss ANDRADE. No.

Mr. MARSHALL. Was any report ever made to you concerning news persons inside the select committee space?

Miss ANDRADE. One of the police officers told me that Mr. Schorr had been in there one time but I didn't know anything about it and I wasn't there. I thought maybe he was pulling my leg. I really wasn't sure.

Mr. MARSHALL. Do you recall when he made this report to you?

Miss ANDRADE. No. It was sometime after he had been in there. I think it was when the report had been leaked out. He said some weeks ago Dan Schorr was here.

Mr. MARSHALL. I will ask you to assume as a fact that Mr. Schorr as reported in the Rolling Stone newspaper stated that on January 25, 1976, he had a copy of the report or a draft of the select committee's report.

Would the statement by the policeman to you have been after January 25, 1976?

Miss ANDRADE. I think it was, sir.

Mr. MARSHALL. You think it was?

Miss ANDRADE. I'm pretty sure it was, yes.

Mr. MARSHALL. Did the policeman give any other circumstances to you surrounding Mr. Schorr's supposedly being inside the space?

Miss ANDRADE. No.

As I recall, I was real busy at the time he spoke to me and I just sort of shrugged it off because I figured he wasn't there or maybe he was just kidding me and I just really didn't worry about him any more.

Mr. MARSHALL. Do you remember the name of the policeman?

Miss ANDRADE. No, but he was there a lot. I would know it if I heard it. He has glasses. He was assigned to us very often.

Mr. MARSHALL. If a member of my staff gave you the name of some of the policemen on duty do you think—

Miss ANDRADE. Yes. Morris. Officer Morris.

Mr. MARSHALL. Did Officer Morris state what time of day Mr. Schorr was supposed to have been within the committee spaces?

Miss ANDRADE. He said it was the evening and I wasn't there at the time. I mean I didn't work that evening that he mentioned, whatever evening it was.

Mr. MARSHALL. So that the record can be clear, as I understand your testimony, the report came to you, you believe, after January 25, 1976.

Miss ANDRADE. Yes.

Mr. MARSHALL. Do you recall what day or night the office was referring to when he mentioned Mr. Schorr being in the space?

Miss ANDRADE. No, I do not. It would tell in the book because everybody had to sign in.

Mr. MARSHALL. Now, do you recall having a conversation with Mr. Schorr on or about January 20, 1976, following a New York Times article concerning the select committee report?

Miss ANDRADE. Yes, I do.

Mr. MARSHALL. Where did that conversation take place?

Miss ANDRADE. It was in B-316.

Mr. MARSHALL. That is the select committee's spaces, offices?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. Who else was present at the conversation between you and Mr. Schorr?

Miss ANDRADE. I don't recall that there was anybody except the policeman, whoever was on duty. It was real busy that morning and he stuck his head in the door and I thought he was kind of joking with me because I didn't read the New York Times. A lot of times newsmen said that to you hoping that you would give out something. I just sort of thought he was pulling my leg, joking, as he often did.

Mr. MARSHALL. What did he say?

Miss ANDRADE. "What am I? An orphan? Everybody has the report. The New York Times has written about you."

I just looked at him and said, "We are not handing out anything here. Go to some other friend, Dan," and he shut the door and left.

Mr. MARSHALL. Did you ever have any other conversation with Mr. Schorr at any time other than what you just testified?

Miss ANDRADE. Not about the report. I mean I have talked to, you know. I talked to him in the halls and said hello.

Mr. MARSHALL. Have you known Mr. Schorr a long period of time?

Miss ANDRADE. From the Watergate hearings I knew him.

Mr. MARSHALL. Did you have any responsibility for a combination or combinations regarding the safes that were in the select committee space?

Miss ANDRADE. Yes, I did. I had them all.

Mr. MARSHALL. When you first began your duties with the select committee who set the combination on the safes?

Miss ANDRADE. The safe people here, Mr. Wills handled it for the building.

Mr. MARSHALL. And those were handed to you?

Miss ANDRADE. No; they were given to Mr. Simms, who was then our security man, and then he left before we moved from the Cannon Building over here and they were then transferred to, I believe, Jackie Hess. Then when we moved to this building, Mr. Field asked that I have them in an emergency so if anything happened and they had to get in I was closer in in Georgetown than Jackie and I could come up and open the safe.

Mr. MARSHALL. During this time that the combinations were transferred from person to person as you have just testified, was there any change in the combinations to your knowledge?

Miss ANDRADE. Yes, they were changed.

Mr. MARSHALL. Tell me when they were changed.

Miss ANDRADE. Well, it was probably some time in May.

Mr. MARSHALL. Of 1975?

Miss ANDRADE. 1975, yes.

Mr. MARSHALL. At that time did you have custody of the written combinations?

Miss ANDRADE. No, I did not.

Mr. MARSHALL. Were they changed just before you got custody at any time?

Miss ANDRADE. Let me explain.

The safes were changed. They were given to only one person. When Mr. Simms left, the safes were changed and he did not get them. Jackie Hess got them directly. I didn't ask for them and I felt the security clerk was perfectly able to handle them. When we moved to this building, Mr. Field asked that she give me the whole set of 15, or whatever they were, combinations in an emergency, so she and I shared them until the end.

Mr. MARSHALL. And at that time then they were not changed, the last move?

Miss ANDRADE. No.

Mr. MARSHALL. Do you know where Miss Hess kept the combinations, that is the combinations in writing?

Miss ANDRADE. No; I do not.

Mr. MARSHALL. Where did you keep your copy of the combinations?

Miss ANDRADE. I had them in a section of my wallet that is hidden, that you don't find with money. I had them on a very small card so nobody would know what they were if they ever found the wallet.

Mr. MARSHALL. Beginning at the time the combinations were delivered to you, were they ever changed between that time and the time the select committee disbanded and the office staff terminated?

Miss ANDRADE. It seems to me they were. I really can't quite recall. I think Mr. Wills would have the record of it. I think we had two that didn't open well and maybe that was the only reason they came and maybe they came to change several.

Mr. MARSHALL. Did you keep those combinations on your person at all times?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. Did you ever have anyone make a request of you to make the combinations available so the safes would be opened?

Miss ANDRADE. No.

Mr. MARSHALL. You never had to divulge the combinations to any other person?

Miss ANDRADE. No.

I did have to open them several times because Miss Hess wasn't there but I never gave them to anyone.

Mr. MARSHALL. Was this during regular working hours that you had to open them?

Miss ANDRADE. Yes; it would be like early in the morning when somebody needed materials from there and Miss Hess either didn't get in from the snow or something. She was late for work.

Mr. MARSHALL. Can you identify the persons who wanted you to open the safes?

Miss ANDRADE. Mr. Field and Mr. Donner early one morning about quarter of eight and Roger Carroll. He had a drawer full of working material.

Mr. MARSHALL. Would you identify for the record his classification?

Miss ANDRADE. He was GAO. He was an assignee from the GAO. I think it was Mr. Field and Mr. Donner the last time I had to open up.

Mr. MARSHALL. Are there any others where you were requested to open safes other than what you testified to?

Miss ANDRADE. No; not that I can recall.

Mr. MARSHALL. Miss Andrade, there was a Xerox machine within the select committee spaces, was there not?

Miss ANDRADE. Yes.

Mr. MARSHALL. Where was this located?

Miss ANDRADE. Well, if you know that it is just one long room like and we sat up front, it was in the next office space to us.

Mr. MARSHALL. But within the secured area?

Miss ANDRADE. No, it was within the employees' area.

Mr. MARSHALL. But within the area protected by the policeman signing people in and out?

Miss ANDRADE. Yes, sir.

Mr. MARSHALL. The Xerox machine insofar as its maintenance and inspection—did persons making copies fall within your area as the administrative assistant?

Miss ANDRADE. Yes.

Mr. MARSHALL. Was there a log or other record established for the Xerox machine so that it could be determined who was using the machine, the number of copies, and what was being copied?

Miss ANDRADE. Well, it wasn't supervised or kept very well. There was a log on the top and everyone was supposed to, and they had been given instructions to, write the date and the number of pages and the number of copies and their name and who it was prepared for, like if some Congressman or some member asked for a copy of something, but it got to the point where people who write six pages for Chairman Pike or 20 pages for so-and-so and you didn't know what they did, and although I did talk about it often they didn't ever straighten up and do it properly.

Mr. MARSHALL. Is it correct that as you got closer to the time of the committee issuing drafts of its report and adoption of its final report that the recordkeeping on the Xerox machine became more lax?

Miss ANDRADE. Yes.

Mr. MARSHALL. But there was no one whose prime responsibility it was to see that the Xerox records were kept accurately; is that correct?

Miss ANDRADE. No; there would be no way to watch it. There was no person.

Mr. MARSHALL. You just simply had to rely on each employee of the select committee?

Miss ANDRADE. Yes.

Mr. MARSHALL. Did you ever complain to Mr. Field about this situation with the Xerox machine and the difficulty in keeping accurate records?

Miss ANDRADE. Yes; I did.

Mr. MARSHALL. Do you recall when you made those complaints?

Miss ANDRADE. I did it very early because it seemed I noticed that kind of a record early when we moved into the building sometime in September of 1975. He said that no one would be Xeroxing that kind of material, and I said we wouldn't know because it was there, it was away from me and away from him, and you would never know unless someone was assigned this, and he said we will just have to trust them because there is no reason for them to take anything out of here and they will write it down.

Mr. MARSHALL. When you say that kind of material are you referring to—

Miss ANDRADE. Secret material.

Mr. MARSHALL. Classified material?

Miss ANDRADE. Yes.

Mr. MARSHALL. Did you make any other complaints to Mr. Field about the security of the Xerox machine and determining what copies were made?

Miss ANDRADE. No; because I thought we weren't going to hire a person assigned to it and I couldn't be standing up because I would never get my work done.

Mr. MARSHALL. Daniel Schorr stated in an article in Rolling Stone on April 8, 1976, that he had possession of the select committee's report on January 25, 1976.

Did you give this report or a draft of any part of the report or a draft of the report or any part of the text of the select committee's report to Mr. Schorr or to any other person?

Miss ANDRADE. No, sir, I never saw it. I read it in the Village Voice. I never saw any of the report until it came through.

Mr. MARSHALL. Do you know anyone who did?

Miss ANDRADE. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or the draft of the select committee's report or any part of the text of the report?

Miss ANDRADE. No, I do not, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Miss ANDRADE. No.

Mr. MARSHALL. Did you give the report or a draft of the report or make any part of the text of the report or a draft available to anyone outside the Select Committee on Intelligence?

Miss ANDRADE. No, sir, I never handled it.

Mr. MARSHALL. Do you know anyone who did?

Miss ANDRADE. No, sir.

Mr. FLYNT. Mr. Price.

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. No questions, Mr. Chairman.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Quillen.

Mr. QUILLEN. Thank you, Mr. Chairman.

How many copies were made of the first report? I believe that was January 19.

Miss ANDRADE. Sir, I have no knowledge of it at all. I wasn't—all of a sudden I wasn't even told. I mean people working late and everybody was doing their part of it and people were staying late to Xerox and I never knew. In fact, at the meeting that we had one of the members asked how many copies we had and I said I didn't know.

Mr. QUILLEN. Would your answer be the same to the January 23 report?

Miss ANDRADE. Yes, sir.

Mr. QUILLEN. Were many copies of different documents Xeroxed during—

Miss ANDRADE. I wouldn't think so.

Mr. QUILLEN. Would there be any way in your opinion to find out specifically how many copies were made of each report and the Xerox records could be verified on those dates?

Miss ANDRADE. No; I looked at the pages of the log that were on the machine and I don't even think they wrote those down when they were Xeroxing the report, even the first draft to which you refer. I think they made so many copies just toward the end that they just didn't even write them. They didn't write down the number.

Mr. QUILLEN. I believe the machines are automatic and register—

Miss ANDRADE. Count.

Mr. QUILLEN [continuing]. The number of copies made. How many pages in the report?

Miss ANDRADE. I really don't recall. I think it is like 276 or something.

Mr. QUILLEN. Let us use a round figure of 300 pages. 20 copies were made. It would be easy to multiply the 20 by the number of pages in the report on that specific day and then check back to see if additional copies were made.

Did anyone in the staff room, anyone, check to see if additional copies had been made to your knowledge?

Miss ANDRADE. Mr. Quillen, I don't think you could tell by the count of the machine because that same day we made many copies of other things. You know, you have big pieces of paper that had 20 pages and you would make 20 copies of each of those pages and this count would all go automatically into the machine so for that day and the day before everybody was Xeroxing many other things so you couldn't specify it was 20 copies of the report of 200 or 300 pages.

Mr. QUILLEN. I know it would be hard to do. It was just a thought. Thank you, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Quillen.

Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Mitchell.

Mr. MITCHELL. Thank you, Mr. Chairman.

As you know, Miss Andrade, our entire effort is directed toward chasing down one copy of that report.

Miss ANDRADE. Yes.

Mr. MITCHELL. Another individual testified earlier that a very complete record was kept of the committee report distribution, that there was, indeed, a sound system of accountability. He was quite firm in his position.

But, I thought I understood you to say in response to counsel that you didn't even know if there was a record of accountability of the report distribution.

Miss ANDRADE. Sir, I didn't see it on the log of the Xerox. It may be that somebody stood there in the night when they Xeroxed and said these are 20 copies and we got them all together and we will lock them in the safe and they knew it, but as far as listing how many copies of so many pages, it was not on the machine at all.

Mr. MITCHELL. I wasn't speaking of the Xerox. I was speaking of the final reports that were distributed to the members. Our chief investigator, Mr. Bowers, has stated that there was total disarray, utter chaos, when it came to accountability. Yet, one of your staffers stated that there was a very fine system.

My question to you is, are you aware of the system of distribution to members?

Miss ANDRADE. Yes.

Mr. MITCHELL. Did you even see a notebook, or piece of paper, or anything that said—

Miss ANDRADE. I saw it first when the various research employees were to deliver them to the members or to bring them up here to the hearing room.

Mr. MITCHELL. So there was a system for accountability even though you didn't know which members got which copy which time or things like that, or there wasn't?

Miss ANDRADE. No.

Mr. MITCHELL. You are aware of it?

Miss ANDRADE. No.

See, we had briefing books at every hearing and the briefing books had their names on them and we put the materials in them and so we always had accountability because only the member had the book. When it came the day for the final report it was in a different kind of book. This was 19 or 20, or whatever was the number, in black heavier bound book and we bound them. Researchers brought them up here and handed them out to the members.

Mr. MITCHELL. As far as you know there was no precise record of who received what copies?

Miss ANDRADE. No.

Mr. MITCHELL. Was there any record as far as you know of the destruction of the reports that were left over that were not delivered to members?

Miss ANDRADE. Yes.

I think they were very good at all times. Any leftover pages or anything that were not thrown out in the trash—that was outside—we

never had people picking up the trash that had any security in it. Everything was shredded. Any papers that didn't come out right were shredded.

Mr. MITCHELL. I am referring now that six or seven copies the staff had of the final report of the committee. We have heard testified before both ways, that there was, indeed, a record of distribution, whose copies they had destroyed. We have heard other times there was no record at all there.

Are you aware of any record of destroying how many copies—

Miss ANDRADE. No; I am not.

Mr. MITCHELL. Do you know whether or not there was even a record of it?

Miss ANDRADE. No; I don't think there was.

Mr. MITCHELL. Thank you, Miss Andrade.

I have no further questions, Mr. Chairman.

Mr. FLYNT. Mr. Cochran.

Mr. COCHRAN. Mr. Chairman, thank you.

Miss Andrade, in your judgment based on your observation of the committee and its staff in dealings with the report and the draft of the report, would the report that was given to Mr. Schorr or the report that ended up in the hands of Mr. Schorr and the New York Times and whatever other sources, news sources, might have had it, have been given to them intentionally or would they have come across it accidentally?

Miss ANDRADE. I think somebody would have to have given it to them intentionally.

Mr. COCHRAN. That is all I have, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Cochran.

Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Miss Andrade, we thank you and your counsel for your appearance before the committee and for the information which you have furnished to the committee. With the thanks of the committee you may step down.

Miss ANDRADE. Thank you.

Mr. FLYNT. The Chair recognizes the gentleman from South Carolina, Mr. Spence, for a motion.

Mr. SPENCE. Mr. Chairman, I move that the committee counsel, John Marshall, or associate counsel, Harvey Harkness, together with one committee member be authorized to take the deposition of Representative James V. Stanton.

Mr. MARSHALL. Mr. Chairman, if I may state for the record, it is our understanding that Mr. Stanton is presently ill and may be confined to the hospital longer than the length of these hearings. Accordingly, it will be necessary to take his deposition in the event Mr. Stanton is unable to actually appear at the committee hearings.

Mr. FLYNT. Is there any discussion of the motion to authorize the committee counsel or associate counsel together with one member of the committee to take the deposition of Representative James V. Stanton. This requires a special authorization by the committee and I suggest that the staff director call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. As many as favor the motion will, when their names are called, vote aye. Those opposed will vote no.

Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

Mr. PRICE. Aye.

Mr. SWANNER. Mr. Quillen.

[No response.]

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

[No response.]

Mr. SWANNER. Mr. Foley?

[No response.]

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, seven members vote aye; no members vote no, five members absent, not voting.

Mr. FLYNT. On this vote by rollcall the yeas are seven, the nays are none, and the motion is agreed to.

I recognize the gentleman from South Carolina for an additional motion.

Mr. SPENCE. Mr. Chairman, pursuant to rule XI 2(k) (5), I move we go into executive session at this time.

Mr. BENNETT. Mr. Chairman, may I ask a question?

Mr. FLYNT. Yes.

Mr. BENNETT. The question is why don't we just have one for today and tomorrow, which you can do for any time you want to do it at the call of the Chair. Isn't that proper?

Mr. MARSHALL. I am concerned about that procedure, Mr. Bennett. The rules are not terribly clear on the point and I think perhaps—

Mr. BENNETT. We do it in a lot of the committees.

Mr. PRICE. I think they are clear on legislative committees but I am not certain on this one.

Mr. MARSHALL. Investigative committees.

Mr. FLYNT. Is there any further discussion?

This is a motion which under the Rules of the House must be made in open session with a quorum present and further under the Rules of the House the vote must be taken by a rollcall vote.

As many as favor the motion will, when their names are called, vote aye. Those opposed will vote no. And the Clerk will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.
 Mr. SWANNER. Mr. Price.
 Mr. PRICE. Aye.
 Mr. SWANNER. Mr. Quillen.
 [No response.]
 Mr. SWANNER. Mr. Teague.
 [No response.]
 Mr. SWANNER. Mr. Hutchinson.
 Mr. HUTCHINSON. Aye.
 Mr. SWANNER. Mr. Hébert.
 [No response.]
 Mr. SWANNER. Mr. Quie.
 [No response.]
 Mr. SWANNER. Mr. Foley.
 [No response.]
 Mr. SWANNER. Mr. Mitchell.
 Mr. MITCHELL. Aye.
 Mr. SWANNER. Mr. Bennett.
 Mr. BENNETT. Aye.
 Mr. SWANNER. Mr. Cochran.
 Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, seven members voted aye and no members voted no, five members absent, not voting.

Mr. FLYNT. On this vote in open session, a quorum present, the vote being taken by rollcall, the yeas are seven, the nays are none. The motion is agreed to and accordingly the committee resolves itself into executive session.

[Whereupon, at 10:35 a.m. the committee proceeded into executive session.]

AFTERNOON SESSION

[Whereupon, at 2:48 p.m., the committee resumed in open session.]

Mr. FLYNT. The committee will come to order.

The Chair announces that a quorum is present for the purpose of taking testimony and receiving evidence, and I would like to ask Mitchell Rogovin to stand and take the oath.

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROGOVIN. I do, Mr. Chairman.

TESTIMONY OF MITCHELL ROGOVIN, COUNSEL TO THE DIRECTOR, CIA, ACCOMPANIED BY SEYMOUR R. BOLTEN, DONALD P. GREGG, AND GEORGE L. CARY

Mr. FLYNT. Will you give your name and your occupation?

Mr. ROGOVIN. My name is Mitchell Rogovin. I am a partner in the law firm of Rogovin, Stern & Huge, in Washington, D.C.

Mr. FLYNT. Were you during the period 1975-76 special counsel to the Central Intelligence Agency?

Mr. ROGOVIN. Yes, sir, Mr. Chairman.

Mr. FLYNT. Would you identify the date that you became such special counsel and whether you are still acting in that capacity?

Mr. ROGOVIN. July 1, 1975, was the day I began the representation I continue in that capacity at this time.

Mr. MARSHALL. Mr. Rogovin, you are appearing here at the invitation of the committee.

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. Prior to the hearing you received copies of House Resolutions 1042 and 1054 as well as a copy of the rules of this committee, the investigative procedures adopted by this committee, and Chairman Flynt's opening statement in this investigation?

Mr. ROGOVIN. Yes; Mr. Marshall.

Mr. MARSHALL. Do you have a written prepared statement which you wish to make to the committee at this time?

Mr. ROGOVIN. Yes, I do, Mr. Marshall. Copies were distributed to the members earlier this morning.

May I go ahead?

Mr. MARSHALL. Yes, sir, if you would.

Mr. ROGOVIN. Mr. Chairman and members of the House Committee on Standards of Official Conduct, my name is Mitchell Rogovin. I am a partner in the Washington law firm of Rogovin, Stern, and Huge. Since July of 1975, I have served as special counsel to the Director of Central Intelligence.

In that capacity I represented the Director and the Central Intelligence Agency before the House Select Committee on Intelligence and I had day-to-day dealings with the staff director, counsel to the committee, and the chairman and members of the committee.

I am here today with Seymour Bolten, of the CIA, in response to this committee's request that we appear in connection with your "inquiry into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence."

Before detailing my specific involvement in the review and handling of the select committee's draft report, I believe it may be helpful if I discussed with you the background of the agreement with the committee that led to our review.

As you will recall, in September of 1975 the select committee made public certain classified material it had obtained from the intelligence community. As a consequence of this action by the select committee, President Ford directed "all departments and agencies of the executive branch respectfully to decline to provide the select committee with classified materials, until the committee satisfactorily alters its position."

This significant impasse between the executive and legislative branches was resolved on October 1, 1975, when the select committee, by a vote of 9 to 3, agreed to certain procedures that had been worked out by the President, the chairman, and ranking minority member of the select committee, and other Members of Congress.

In essence, the select committee agreed that it would not publish classified materials, testimony, or interviews containing classified material without first giving the intelligence community an opportunity to review it, and if there was a disagreement with respect to publication, the material would be referred to the President. If the President certified in writing that the publication of the material would be detrimental to the national security of the United States, the

material would not be published. The agreement also provided for a judicial review if the select committee wished to contest the President's determination.

Based upon this agreement between the President and the select committee, the President's earlier ban on the turnover of classified materials was lifted, and the select committee was, under the conditions set forth above, again given access to classified materials.

Apparently, the wisdom of the agreement became an issue with the select committee because its staff director, A. Searle Field, advised me soon after the agreement was entered into that the chairman was unhappy with the agreement and would try to get out of it.

In December, the select committee, under the terms of the agreement, forwarded certain highly classified reports dealing with covert action to the CIA for its concurrence in publication. Thereafter, the President certified in writing that publication of these certain reports by the select committee would be detrimental to the national security.

After that occurred, the staff director indicated to me that he did not believe that the chairman considered the select committee's agreement with the President to be binding on the committee's final report.

Because we were concerned that we might not in fact have an opportunity to review the final report in draft form, Director Colby and I spoke with Chairman Pike and Congressman McClory about it and were told to work it out with the staff director.

I wish to make clear at this point that our primary purpose for wanting to review the report was to make certain that sensitive intelligence sources and methods and other vital secrets would not be included in the published report.

In addition, we hoped to bring factual inaccuracies, if any, to the attention of the committee. In no case, however, did we intend to interfere with the right of a congressional committee to reach its own conclusions and make its own judgments and recommendations.

In November of 1975, before the select committee's intention to abrogate the agreement with the President was communicated to me, I began discussions with the staff director regarding procedures for the CIA's review of the committee's final report.

Mr. Field was not clear at that time as to whether a draft would be available for our review.

Mr. FLYNT. Your report says "when" and you used the word "whether" the report would be available.

Which is correct?

Mr. ROGOVIN. It was a question of timing as to "when" it would be available.

Mr. FLYNT. Excuse the interruption.

Mr. ROGOVIN. During the latter part of November, Mr. Field said he thought that he would have a first draft by the 19th of December and that the CIA would have an opportunity to examine that draft around the first of the year. He indicated the delay was necessary in order to allow members of the committee to comment upon the first draft before we saw it.

It was not until January 19, 1976, that the first draft was completed. During the week of January 12 I had a number of conversations with Searle Field regarding the review of the draft. He made it clear at that time that, while the committee wanted to deal only with the CIA

with respect to the draft, the committee would have no objection if we made the report available to other elements of the executive branch.

He also indicated that giving the CIA an opportunity to review the draft was a courtesy because the chairman did not believe that the prior agreement with the President related to the final draft.

Mr. HUTCHINSON. Final report?

Mr. ROGOVIN. Related to the final "report."

During the latter part of the week of January 12, Mr. Field and I had daily discussions relating to the status of the draft and when we would obtain access to it. It was finally arranged that I would come to the office of the House select committee staff on the afternoon of the 19th of January to discuss the handling of the draft.

On January 19, 1976, I went to the offices of the House select committee and met with Searle Field at around 4 p.m. At first Mr. Field wanted me to read the draft in one of the committee's offices and not take possession of it until the following day. I questioned this decision. Mr. Field called Chairman Pike, who agreed that I could take the draft back with me to the CIA. Because not all the members had picked up their copy of the first draft, Mr. Field asked me not to make copies available outside of the CIA until the following day.

I returned directly to CIA headquarters, arriving at approximately 5 p.m., with the one copy of the draft report Mr. Field had given me and made arrangements for 30 copies to be reproduced that evening by the CIA's printing services office. We have previously furnished to your staff copies of the motor pool log for that evening, as well as copies of the printing services' logs relating to the copies made that evening.

My signature was on the upper right corner of the copy given to me by Mr. Field on the 19th, and as a consequence all copies made by the CIA of the first draft have a reproduction of my signature on them. Because William Hyland, Deputy Assistant to the President for National Security Affairs, was leaving for Europe on the night of the 19th, a copy was delivered to him that evening.

On January 20, 1976, the 30 copies of the House select committee's first draft that had been reproduced the night before, plus an additional 20 copies made that morning, were referred for review within the CIA to the various offices that had originally provided the classified information to the committee.

In addition to the copies distributed within the CIA, copies of the report were sent by CIA courier, who obtained signed receipts, to the following members of the President's Intelligence Coordinating Group: John Marsh, Counselor to the President; Brent Scowcroft, Assistant to the President for National Security Affairs; Henry Kissinger, Secretary of State; Robert Ellsworth, Deputy Secretary of Defense; Edward Levi, Attorney General; Donald Ogilvie, Deputy Director, OMB; and George Bush, Director of Central Intelligence Designate.

Since the draft report dealt with the activities of intelligence agencies in addition to the CIA and since the select committee only wished to deal with the CIA with respect to the review of its report, it was necessary to seek the comments of the other agencies as to whether the report contained any classified material.

Although we were allowed only 1 working day in which to do so, the CIA and the other agencies within the Intelligence Community prepared their comments on the first draft. These comments were collated and processed by the Agency, and a bound copy of the highly classified comments and a covering letter from me were forwarded to Chairman Pike and the members of the committee the morning of the 21st.

During the morning on Thursday, January 22, Donald Gregg, of the CIA's review staff, and I met at 8:30 with Searle Field and members of the select committee staff for 1½ hours to review with the staff our comments regarding classified material contained in the report.

That meeting terminated when the select committee convened at 10 a.m. We reconvened our meeting at 1:30 p.m., for an additional 2½ hours. A third meeting on the 22d was convened at 6 p.m. Contrary to previous testimony before this committee, I did not attend this evening session. I asked Seymour Bolten, chief of the review staff, to take my place, with Donald Gregg, and Martin Packman of the Department of State, to continue the process of reviewing the classified material contained within the draft report.

As I had already made written notations in my personal copy, I gave Mr. Bolten my copy of the January 19 version of the report to take with him to this evening session. He used this copy throughout the evening during his negotiations with the staff.

I later learned that Mr. Gregg had proceeded to the meeting without his copy of the draft report, and that the staff loaned him a copy to use during the discussions. Mr. Gregg told me he did not, however, take this or any other copy of the draft report with him when they left the meeting early in the morning on the 23d of January; nor did Mr. Bolten, who had been using only my personal copy throughout the negotiations, take any other copy of the report back with him.

As Mr. Bolten will testify, he and Mr. Gregg returned to the CIA headquarters building at approximately 1:30 a.m., on the 23d and placed my personal copy of the January 19 version within his briefcase, which Mr. Gregg then hand-carried to the CIA Operations Center for overnight storage.

The following morning Mr. Gregg picked up Mr. Bolten's briefcase from the Operations Center. Prior to Mr. Bolten's arrival at his office that morning, Mr. Gregg received a telephone call from Emily Sheketoff of the select committee staff inquiring as to whether he or Mr. Bolten had taken a copy of the select committee's draft report with them the previous evening, stating that she was having difficulty accounting for one of their copies.

Mr. Gregg checked Mr. Bolten's briefcase, ascertained that the only copy they returned with was my personal copy which I had loaned to Mr. Bolten, and replied in the negative to Miss Sheketoff.

When Mr. Bolten arrived at his office that morning, Mr. Gregg mentioned to him Miss Sheketoff's call, and Mr. Bolten confirmed that he had not taken any other copies of the draft report with him the previous evening.

Mr. Packman of the State Department subsequently advised me that he also had arrived at the January 22 evening meeting without a copy of the report, and that the staff had loaned him a copy to use during their discussions. Mr. Packman said that he had taken that

copy back with him to the State Department following the meeting and had placed it within a safe.

Mr. FLYNT. Mr. Rogovin, if you will suspend I will go, and my colleagues will go, and vote on this recorded vote.

The committee will suspend and will resume immediately upon the arrival of a quorum so that you may continue your statement.

[Brief recess.]

Mr. BENNETT. The committee will come to order.

Continue where you left off.

Mr. ROGOVIN. At various times during the review process, the committee staff members indicated that they would make certain changes to meet arguments we had raised with them regarding classified material. Since the precise language was not agreed upon, I asked Mr. Field to see the second draft to insure that the changes met our needs. During the day of January 23, he advised that a revised draft would be made available to the CIA. Arrangements were made at the CIA to receive the second draft after working hours, but it was not delivered. At 8 p.m., a secretary in the review staff called me at home to say that the second draft had not been delivered. I called Searle Field at his home that evening and spoke to him for some 45 minutes. He denied that any formal commitment had been made by the committee to furnish a second draft. Although at one point during the conversation he said he might make one available, by the end of the conversation he flatly refused to make a copy available.

On the morning of January 24, I spoke to several members of the committee about Field's refusal to make a copy of the latter draft available. One of the members, Representative Aspin, agreed to lend his copy to the Agency to reproduce and return to him. This second draft was reproduced on the 24th and distributed that day to the same members of the President's Intelligence Coordinating Group who had received the first draft on January 20. Distribution within the CIA was not completed until the morning of January 26.

Although the select committee had formally voted to make the report public on Friday, January 23, we still held out hope that we could persuade the committee to reconsider the publication of those portions of the report that contained classified material. For this reason, a meeting was convened at the White House on Sunday, January 25. At this meeting of the President's Intelligence Coordinating Group to discuss the problem we were having with select committee, Director Colby told me that he had been advised that the New York Times [Reporters John Crewdson and Nick Horrock] planned to publish stories based on the select committee's report the following day.

On January 26 a New York Times article [datelined January 25], written by John Crewdson, was attributed to the select committee's report, a part of which stated that "the 338 page report, which has not been released but a copy of which was obtained by the New York Times discloses a number of irregularities * * *"

There has been discussion before this committee as to whether or not the select committee's report, or those portions of that report as published in the Village Voice, actually contains classified information. On January 15, 1976, the President sent Chairman Pike a letter certifying, in accordance with their agreement, that certain information planned for inclusion in the report, if made public, would be "detrimental to the national defense."

mental to the national security." Nevertheless, this information was included in the report, and was published in the Village Voice. The two versions of the select committee's draft report which I received were distributed only to individuals within the executive branch who had the appropriate clearances and who had a legitimate need to be involved in the review of the reports. It is my understanding that each of these individuals treated the report as a classified document, despite the fact that neither of the draft reports which I received had been classified in any fashion by the select committee. As I mentioned earlier, a copy of the intelligence community's comments regarding classified material in the report was made available to each member of the select committee on January 21. These comments are contained within a document which was classified top secret based on the highest classification of the material contained therein, with the majority of these comments having been classified secret. I am prepared to identify those portions of the select committee's report which are classified, and other considerations of a secret nature, in executive session.

In doing so, I wish to make clear to the committee that, as Special Counsel to the Director of Central Intelligence, I have neither the power to classify or declassify material. Throughout my representation of the CIA, before both the House and Senate select committees, I relied upon senior officials of the CIA to advise me with respect to matters of classification.

This committee has been told that copies of the select committee's draft report were cabled by the CIA to its various stations throughout the world. This is incorrect.

On one occasion, at the request of the select committee, a 14-page portion of the draft report dealing with CIA activities in a foreign country was cabled over secure communications facilities to the U.S. Ambassador in that country for his comment. The staff director requested that we accommodate the committee in this fashion. His request was made on Friday, January 23. The Ambassador's response was received by the CIA Communications Center on the morning of January 26 and was immediately made available to the committee.

In a second instance, 16 other pages of the House select committee's draft report were forwarded to a CIA station overseas for comments with respect to the potential damage of disclosure of materials considered by CIA headquarters to be extremely sensitive. These pages were hand carried by a CIA officer who coincidentally was scheduled to travel to the country in question, arriving there on January 24. The station was also instructed to transmit the text to three additional stations which had a direct interest in the material.

In neither instance was the full report made available to anyone abroad, and in all instances the small portions which were made available came from the January 19 draft of the select committee's report.

Except as I have described above, I have neither given the select committee's report to any unauthorized person nor am I aware of anyone within the executive branch or the legislative branch who made the report available to any unauthorized person.

On January 29, the full House voted not to make the report public in its present form. In the ensuing period, numerous news media articles appeared relating to the contents of the report, culminating with the printing of a major portion of the report in the Village Voice, which

first became available to the public on February 11. Also during this period, information appeared in the news media indicating that Mr. Daniel Schorr had been given a copy of the select committee's report and had made that copy available to the Village Voice. On February 19, the full House voted to have your committee investigate the leak of the report to Mr. Schorr.

During this period an assessment was undertaken by the CIA to determine whether the version of the select committee's report published in the February 16 and 23, 1976, editions of the Village Voice was identical to the versions of the drafts made available to me.

After a careful examination and comparison of these draft reports and the text of the Village Voice publications, it is apparent that there are significant differences between that which was published in the Village Voice and the reports given to the CIA.

To the best of my knowledge the CIA and, through it, the executive branch, obtained copies of the draft report only in the manner I have previously described. For the purpose of my analysis I am disregarding the January 19 draft since it is, on its face, substantially different from the Village Voice text.

With regard to the House select committee draft report made available to me on January 24, our review indicates that there are significant omissions, inclusions, and substantive changes in this draft as compared to the Village Voice text. Our memorandum specifying some 88 differences has been made available to your staff. These differences are substantial enough to leave little doubt that the Village Voice publication could not have been reproduced from the draft report furnished to the executive branch on January 24, 1976. While a number of these differences could conceivably be typographical errors on the part of the Village Voice proofreaders, others are clearly differences in text. In this regard, we found at least 10 significant differences which I believe could not be ascribed as typographical errors on the part of Village Voice proofreaders, who were otherwise quite meticulous in showing where they had made deletions or other changes in the text. Moreover, there are three numbered pages missing in the draft report received by the CIA on January 24. These are pages 25, 249 and 250. The first page, page 25, is apparently also missing in the Village Voice edition, as the editors parenthetically point out at page 62 of the February 23 issue of that publication. However, the material at pages 249 and 250, while missing from the draft made available to the CIA on January 24, appears to have been included in the House select committee draft given to the Village Voice, as published at page 84 of the February 16 issue of that publication. We have previously submitted to your staff the affidavits of my secretary and the journeyman pressman within the CIA's printing services office with respect to these missing pages. In addition, I have determined from Representative Aspin, who provided me with his copy on January 24, that pages 249 and 250 are also missing from his retained copy.

Based upon my own knowledge of the facts and the analysis conducted under my supervision, I believe that the Village Voice articles dated February 16 and 23 are not based upon the draft report made available to the executive branch on January 24, 1976.

I would now like to comment on another matter which has been raised in testimony before this committee concerning the adequacy of

CIA's recordskeeping. I am surprised to hear that the question has been raised because while I served as special counsel to the director, I was able to observe on a daily basis the careful attention given by the CIA to the management of its records and documents, and in particular its transactions with both the House and Senate select committees.

Each request from the committee for information was given a specific number when received by the agency. The response to each request was forwarded to the select committee via a numbered transmittal letter, which contained a description of any documents attendant to that request. These responses were forwarded to the select committee by CIA courier, who obtained a signed courier receipt for each delivery. Within the sealed envelopes containing the response, to which the courier did not have access, was a separate receipt which was to have been signed by the staff member of the select committee who opened the envelope and then returned to the CIA. With respect to both the House and Senate select committees, the CIA's review staff registry maintains copies of all documents and materials forwarded to these committees, together with copies of the requests, and a log identifying these requests and responses by number. This registry is still intact, and I am sure that the agency would welcome a visit to this registry from the members and staff members of your committee to observe firsthand the manner in which the CIA kept its records. Further, we have brought with us a folder with some examples of how these requests and the responses to these requests were handled, which we would be pleased to make available and discuss further with you in executive session.

While I have noted that this committee has had its share of adverse newspaper comment, in closing I wish to encourage the committee to continue its inquiry into this matter. The future of effective congressional oversight of the intelligence community is at stake. I believe that effective congressional oversight will come to pass only when mutual respect exists between the Congress and the intelligence community. Such mutual respect will be enhanced when both parties feel secure that the Nation's legitimate secrets are properly safeguarded. My own experience over the past year has been mixed in this regard. In dealing with the Senate select committee, I felt comfortable that the procedures had been adhered to for the protection of classified material. I must, however, in all candor state that was not the case in my relationship with the House select committee. Recognizing that antagonisms may develop during an investigation, I nonetheless believe that it was in no one's legitimate interest to leak documents or reports containing sensitive classified material. As it must be apparent to this committee, as of Sunday, January 25, and thereafter until the publication of the report in the Village Voice, the CIA and the rest of the executive branch, especially in the light of House Resolution 982 of January 29, still entertained the hope that the final official version of the report would omit those highly classified items that had been brought to the House select committee's attention.

The fragility of the first amendment is of great concern to me, and I know this concern is shared by the senior officials at the CIA. Personally, I hope you will be able to resolve your inquiry without the necessity of calling members of the press. The best defense our Nation

has with respect to keeping its legitimate secrets from the eyes of our adversaries is an effective and respected classification system. This is a goal that should be sought. This committee has seen, however, such was not the case with respect to the House select committee's final report.

Mr. FLYNT. I designate Mr. Charles E. Bennett, the Representative from Florida and a member of this committee, to administer the oath to Mr. Seymour Bolten.

Mr. BENNETT. You do solemnly swear or affirm that the testimony you will give before this committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. BOLTEN. I do.

Mr. BENNETT. We have a record vote now, and so we will come back as soon as that vote is completed.

[Short recess.]

Mr. BENNETT. The committee will come back to order.

We will have a statement by Mr. Bolten.

TESTIMONY OF SEYMOUR BOLTEN, CHIEF OF REVIEW STAFF, CENTRAL INTELLIGENCE AGENCY

Mr. BOLTEN. Thank you, sir.

Mr. Chairman and members of the House Committee on Standards of Official Conduct:

My name is Seymour Bolten.

During much of the period of the existence of the House Select Committee on Intelligence, I was the chief of the CIA's review staff formed by the then Director Colby to serve as a focal point within the Agency to work with and assist the House and Senate select committees on intelligence in the conduct of their inquiries.

Mr. Donald P. Gregg, who was responsible for the day-to-day liaison with the House select committee's staff, is also present today, right behind me, to assist in responding to committee questions.

I do not have a formal opening statement, as I associate myself with the description of events just presented by Mr. Rogovin. I welcome, however, this opportunity to contribute in any way I can to your inquiry into the circumstances surrounding the unauthorized publication of much of the select committee's final report.

Mr. Rogovin has already recited in detail the facts concerning the negotiations that took place on the night of January 22-23 with the select committee staff. So as to leave no doubts about it, I wish to state emphatically that I did not take nor was I provided with a copy of the select committee report other than the copy I brought with me when I departed from the office of the select committee at approximately 1 a.m. that night, that is January 23.

I had arrived at about 6 p.m. the evening of January 22 with Mr. Rogovin's annotated copy of the January 19 version of the report. It was in two volumes in black spring binders. We have provided your committee staff with Mr. Rogovin's original copy I believe about 2 months ago or so.

I used that copy throughout the evening, making occasional handwritten notations in red ink, to indicate problem areas for later discussion. When I left the committee, the select committee office, at about

1 o'clock, I took that copy and no other with me. At the time of our departure, Mr. Gregg and I assumed that we would receive a clean draft the following day, so that, as Mr. Rogovin has testified, we could learn which of the changes or deletions we requested had in fact been accepted by the committee.

Moreover, contrary to some testimony before the committee, we could not have been able that night to reconstruct what the next day's version would look like for the simple reason that we had no way of knowing in advance how the select committee would vote, would treat the requests we had made the following day.

So much for the night of January 22-23. At this time and for the record I wish to state that I neither gave, loaned or showed copies of any version of the select committee report to any unauthorized person, nor do I know of anyone else who did.

Now let me turn to a notion expressed before the committee and elsewhere to the effect that the CIA and other elements of the executive branch somehow benefited from the leaks of sensitive intelligence information contained in the select committee report, information which the entire executive branch had strenuously sought to have deleted or revised prior to publication. Nothing could be more erroneous.

While it may appear to some here in Washington that the chain of leaks that culminated in the unauthorized publication of most of the text of the report was no more than an embarrassment to CIA, in my judgment these leaks of classified information caused considerable damage abroad to the foreign intelligence mission of the CIA. In the words of House Resolution 591, these leaks did "adversely affect the intelligence activities of the CIA in foreign countries."

The fact of the matter is that no American benefits from leaks, partly because of the damage these actions cause in foreign countries, and particularly because intelligence information, when revealed, permits our adversary to take steps to deny us information of key importance in the future.

It is, therefore, difficult for me to understand how anyone could rationally conclude that the CIA or any other components of the executive branch could see any redeeming merit in releasing portions of this classified report. In this connection it is worth noting that until the very day of the publication of the Village Voice on February 11 we in the CIA continued to hope that a mutually acceptable compromise could be worked out to permit the publication of the report in accordance with House Resolution 982 of January 29.

I firmly believe that throughout this period the CIA and other elements of the executive branch acted in good faith and tried their utmost while protecting intelligence sources and methods and other vital secrets to cooperate with both congressional committees during a period that was indeed turbulent and, to some extent, traumatic for us all.

Mr. Chairman, in your opening remarks on July 19 you stated that it is necessary for Congress to "account for and safeguard the security of classified information which comes into its possession, if the House of Representatives is to participate meaningfully in the Nation's foreign policy and oversight of intelligence operations."

Speaking personally, but as a career intelligence officer of 27 years experience, and a veteran of 18 months of involvement in the congress-

sional investigations of CIA, let me say that your statement succinctly sums up the dilemma in which both the legislative and executive branches now find themselves. Whatever else your inquiry may accomplish, these hearings will have served a most valuable purpose if they result in a serious effort to resolve the problem, with perhaps new rules, legislation, but with above all, an attitude that is less adversarial and more collegial.

The intelligence services of this nation want an effective congressional oversight, but it can only be accomplished in an atmosphere of mutual trust, professional discipline, and a genuine acceptance by all participants that a superior intelligence system is essential to this Nation's future security and welfare.

Thank you for this opportunity, sir, to make these remarks.

Mr. BENNETT. The counsel will now inquire of Mr. Rogovin and Mr. Bolten.

Mr. MARSHALL. Gentlemen, I address these remarks to you both. In the event that your evidence or response to any of the questions that are put by me or by the committee may involve information or data concerning an executive session of the Select Committee on Intelligence, which has come to your attention, or classified information, or evidence which may tend to defame, degrade, or incriminate any person, will you please advise the committee so it may take appropriate and timely action under the Rules of the House of Representatives?

Mr. ROGOVIN. We will, indeed.

Mr. BOLTEN. Yes.

Mr. MARSHALL. Mr. Rogovin, my questions will be addressed initially to you followed by any questions that the committee may wish to put to you, and then we will turn to Mr. Bolten, if that is satisfactory, Mr. Chairman.

Mr. Rogovin, turning to your statement that you have delivered to the committee and particularly on page 15 of that statement, the third paragraph from the top of that page deals with the January 19, 1976, draft of the select committee report, and the differences between that draft and the publication in the Village Voice of a portion of the select committee's report or draft of that report in issues dated February 16 and February 23.

Your statement further goes into great detail as to what the differences are between the Village Voice publication and the January 24 draft.

Could you elaborate further on the differences if any between the January 19 draft and what appeared in the Village Voice on the dates I mentioned?

Mr. ROGOVIN. Yes.

Mr. Marshall, the January 19 draft was the draft to which we addressed our initial comments. We were successful in a number of instances, quite a number of instances, in causing the staff to bring to the attention of the committee material that should be deleted or phraseology that should be substituted. By the time the draft of the 24th was made available to us, we were able to draw a sharp distinction between the first, what we called the first draft and the second draft.

When it came to analyzing the Village Voice, it was apparent on a rather fast reading that the differences were much more substantial as to the January 19 draft than with the 24th draft. After an examina-

tion and initial analysis, we determined that the issue was, "how close was the 24th draft to the material published in the Village Voice, or were they in fact identical?" It served no useful purpose to make the same type of analysis with the earlier draft, which on its face had substantial differences, far in excess of the ones that we found on January 24. We disregarded, for purposes of our analysis, the January 19 draft.

There were, for example, a large number of footnotes that we sought to have stricken, and that were in fact stricken, from the January 19, 1976, draft. We could demonstrate, if you wish in executive session, the substantial differences between the 19th and 24th drafts.

Mr. MARSHALL. Were there portions of the text of the January 19 select committee draft which did not appear in the Village Voice publication?

Mr. ROGOVIN. My understanding, Mr. Marshall, was that the same 338 pages constituting the first draft, constituted the last draft as well. What took place were changes of individual pages. You really didn't have a second or third draft as one might generate in a law office. These were merely a substitution of changed pages.

I don't recall any materials that were in the January 19 draft that didn't appear in the Village Voice, unless they were materials that we sought to have stricken because of classification.

There were some changes that we were aware of. In essence, these changes toned down some of the allegations or statements of fact that the committee had in their first draft. I remember one, for example. There were a number of pointed references to Henry Kissinger. The subsequent draft toned it down to a reference to the Department of State. I think these are matters that were discussed by the committee during that week. This is one example of the kinds of changes that exist between the 19th and the 24th.

There was another difference. There was a footnote relating to the so-called Senator Jackson memorandum, which, I do not believe was in the first draft. It was included in the subsequent draft that we had.

Mr. MARSHALL. Is it your testimony that while there are substantial differences between the January 24 copy of the select committee report and what appeared in the Village Voice, that there are even greater differences between the January 19 draft and what appeared in the Village Voice?

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. Is that correct, sir? But I take it you are unable to determine whether what appeared in the Village Voice was a product of something that occurred between the 19th and the 24th, or something which occurred after the 24th?

Mr. ROGOVIN. That is right. All we could do is determine that the latest draft that we had was substantially different from the Village Voice publications.

Mr. MARSHALL. You have gone into great detail in affidavits which are already on file with this committee, specifying various differences between the January 24 draft and the Village Voice draft.

Are you satisfied, sir, that every copy which was made from either the January 19 draft or the January 24 draft, both of which were made available to the Central Intelligence Agency and to the executive branch has been accounted for?

Mr. ROGOVIN. The January 24 drafts I believe have been accounted for. As to the January 19 drafts, we made no effort to account individually for those particular drafts. The reasons are really twofold.

In the first instance, a memorandum had been sent around to all holders of the January 19 draft, bringing to their attention that the draft itself contained classified information, and that although the select committee had not classified it in any fashion, or put any warning on it, we considered, the Agency considered, it to be a classified document, and to be treated as top secret.

Mr. MARSHALL. This is an internal memorandum within the Central Intelligence Agency?

Mr. ROGOVIN. Not only within the CIA but to all holders outside of the CIA. It was sent to the list that I give for external distribution.

We accounted for all of the external distribution, both of the January 19 draft and the January 24 draft.

We have not accounted for the internal distribution within the CIA with respect to the January 19 draft. We did so with respect, however, to the January 24 draft.

Mr. MARSHALL. What I am not clear about, and perhaps this is just my lack of understanding, is even though there were differences between the January 19 draft and the Village Voice draft, why was it not necessary to account for the January 19 draft?

Mr. ROGOVIN. Our concern really was based on the apparent similarity between the 24th draft and the Village Voice. I wanted to be satisfied that that similarity was a surface similarity, and that there was in fact a difference. Once we began the analysis, we called for the return of all of the drafts that had been given as of January 24. Again, because we felt that the January 19 draft was sufficiently dissimilar, we felt it not necessary to go through the accounting process to obtain the return of all the drafts that had been delivered within the CIA. We did, however, secure an accounting for all of the external distribution of both drafts.

Mr. MARSHALL. When the January 19 draft was distributed within the executive branch, CIA and other departments in the executive branch, was the draft marked in any way, other than in this cover letter that you mentioned?

Mr. ROGOVIN. No.

Mr. MARSHALL. What means does the Central Intelligence Agency or other departments of the executive branch have to control Xeroxing of the select committee drafts in its possession?

Mr. ROGOVIN. None.

Mr. MARSHALL. Were the copies numbered at all when they were distributed within the CIA or within the executive branch from the CIA?

Mr. ROGOVIN. The January 24 editions were numbered, and my secretary kept a list of who the recipients were.

Mr. MARSHALL. Was the January 19 draft numbered?

Mr. ROGOVIN. I don't believe it was. We were under an enormous time bind, Mr. Marshall. We had one day to solicit the views of the executive branch with respect to the draft, and we worked around the clock. We did not, at the time that the distribution was made, envision that there would be any type of a problem with respect to whom received what draft at what time.

Mr. MARSHALL. Let me ask you a question which may be difficult, even impossible, to answer, but I would like to get your views if you can give them to me.

In your judgment, would it be possible that whatever appeared in the Village Voice, February 16 and 23 editions, was a combination of the January 19 draft and the January 23 draft?

Mr. ROGOVIN. To me it was like the type of service that one sees in a lawyer's office, CCH or Prentice Hall. Every week your secretary gets matters to include and matters to take out of the service. If she does not keep current, then your service, your tax service, will not be the same as your partner's. It depends on who is keeping it current.

All we know is that the draft we got on the 24th had certain changes in it that had taken place since the 19th. Someone else's draft may have been markedly different because they had gotten more changes or had not made enough changes. It is conceivable to my way of thinking that each member, and indeed each staff member as well, may have had a slightly different version, depending on whether all of the insertions had been made at the same time.

Mr. MARSHALL. Were there things in the Village Voice draft, and by that I am using shorthand for the publications of February 16 and 23, and did not appear in either the January 19 draft that the CIA had access to, or the January 24 draft which the CIA had access to?

Mr. ROGOVIN. Yes. There were pages that were missing from our draft of the 24th that were in fact reproduced in the Village Voice. I am not aware of specific text. I would like to ask my conferees here if they are aware of any specific item of text.

Mr. BENNETT. If the staff will yield at that moment, I think the reason he asked that last question is because as I understood your answer to the question before, the thing in the Village Voice might have been a product of the 19th and 23d combined, and you had them both.

Mr. ROGOVIN. Yes, we had both copies.

Mr. BENNETT. Now you are saying you don't think that because there were some absences from the 23d that appeared in the Village Voice.

Mr. ROGOVIN. That is right. The draft of the 24th that we had was missing 2 pages. That material does appear.

Mr. MARSHALL. Let me see if I can clear that up.

If we say we have information that we designate as A, for shorthand purposes, and information which we designate as B, for shorthand purposes, and somehow what appeared in the Village Voice was A plus B plus C, then one begins to wonder where C came from.

My question is, to go back, was there anything in the Village Voice which was not in either the 19th draft or the 24th draft, if you can answer that question?

I realize there were differences in language changes. It is a difficult question to answer.

Mr. ROGOVIN. Yes, there were language changes that we refer to within the 88 items of distinction, that were in neither draft. There was new language.

Mr. BENNETT. And some pages missing.

Mr. ROGOVIN. That is right, 2 pages missing. There were also in the Village Voice draft editorial comments where footnotes were dropped. I assume they were dropped simply for space purposes by the Village Voice. We don't know what those footnotes would have said, whether they would have been the same as the footnotes that we had in either of our drafts.

Mr. MARSHALL. Now in your opening statement you mentioned that in various meetings the executive branch and the CIA raised objections to some of the material which was in, say, the January 19 draft; is that right, sir?

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. And I believe those meetings took place strictly with staff of the Select Committee.

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. And as I understand your opening statement, the CIA was less than satisfied with the results of the objections it made, in the sense of obtaining the agreement of the Select Committee's staff to delete material.

Mr. ROGOVIN. Well, in some instances there was agreement that they would recommend to the committee that deletions should be made. In other instances they agreed to a change of language. The precise language had not been agreed upon, however. We pointed out that "you can get the same information across, but you can't use this phrase because this phrase came from communication intercept, and therefore should be deleted."

They understood that. They were going to come back with alternative language, which we wanted to see to make sure it didn't create a problem for us. There was still another area where they were quarreling and saying well, they didn't think that the particular item that we felt was so highly classified was something that should give anyone any concern. They would not recommend that it be deleted. But it would be up to the committee in the last analysis to determine whether or not our objections would be accepted.

Mr. MARSHALL. Did the executive branch or the CIA ever go to a member of the select committee to in effect take an appeal from the select committee's staff decisions concerning what would be included or not included in any draft of the select committee's report?

Mr. ROGOVIN. The process of bringing our concerns to the committee began on a Wednesday. The process began at 8:30 in the morning, on the 22d, with Mr. Field and some of his staff people. The process was interrupted during the day. There were three separate meetings.

At one of the meetings, I remember Congressman Kasten sat in. I know that in that discussion we would argue to him as well as to the staff members, so he was certainly privy to the arguments we were making.

I believe we also may have brought some of our arguments to the attention of either Congressman McClory or his staff assistant, Paul Ahern, during that day. It was a packed day. Whoever we could get to listen to our complaint was the person we grabbed hold of.

We dealt primarily with the staff, although it could well be that we spoke to members of the committee. I just don't have any specific recollection of it.

Mr. MARSHALL. After you received a copy of the draft of January 23, which I believe you testified you received from Mr. Aspin on the 24th.

Mr. ROGOVIN. That is right.

Mr. MARSHALL. Obviously the CIA was aware that some of the objections that it made had been overruled, and that classified material was in the January 23 draft; is that right?

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. At that point did anyone in the executive branch go directly to a select committee member, that is, a member of the House of Representatives, to protest that inclusion?

Mr. ROGOVIN. I don't recall that taking place. The sequence was that the draft from Les Aspin was received late Saturday morning distributed that day, and a meeting was set up at the White House for the express purpose of discussing the problem we had. The problem was that the bulk of the objections that we had raised were apparently not dealt with in the draft that we had. The meeting on Sunday was for the purpose of bringing this to the attention of the President's Intelligence Coordinating Group.

Mr. MARSHALL. That was the January 25 meeting you are referring to, would you say, the meeting on Sunday?

Mr. ROGOVIN. That is right.

Mr. MARSHALL. As a result of the meeting on Sunday, was any action taken by the executive branch to communicate with the select committee about the executive branch's concerns of classified information in the January 23 draft?

Mr. ROGOVIN. The process of bringing our concerns to the attention of the Congress was severely shot in the head when on Monday the New York Times carried substantial excerpts from the report. It was somewhat of a feckless procedure at that point to try to object to the publication of things that were already appearing in the Times. On the 27th I believe I sent a rather strong letter to Congressman Pike describing our great concern. If you will, I can read the page and a half here into the record.

Mr. MARSHALL. Well, sir, could you make the letter available for the record, and then summarize it for us, unless there are parts that you think should be read, unless the committee prefers to have it read.

Mr. BENNETT. I like your system better, and I would also like to ask you, Did you ever approach the Speaker?

Mr. ROGOVIN. No, I did not, and I am not aware of anyone in the executive branch at that point making contact with the Speaker. We were of the mind at that time that we had precious little chance of stopping this report from being published. I had been a great advocate of bringing a lawsuit to enjoin the Public Printer from publishing the report. I had raised this point on a number of occasions at the White House. Attorney General Levi had given the back of his hand to my theory of trying to enjoin the publication. My letter to Congressman Pike said:

As you are undoubtedly aware, the Agency and the intelligence community are deeply disturbed by the pervasive and premature leaking of your committee's final report. We have already communicated to you our feeling as to the report's bias. What troubles us particularly at this time are items in the news attributed to your Staff Director, Mr. Field, alleging that the leaks may have come from the Executive Branch. Let me assure that as far as this Agency goes, there is no basis whatsoever for Mr. Field's allegation.

Then we made reference in the letter to the fact that the New York Times' story itself indicated that they had access to the report from the committee.

Mr. MARSHALL. When you refer to the New York Times' story, I take it you are referring to Mr. Crewdson?

Mr. ROGOVIN. Mr. Crewdson's story.

Mr. MARSHALL. Which has already been made a part of the record by Mr. John Crewdson's "Dateline: Washington" January 25, which appears in the New York Times on January 26, a Monday; is that correct?

Mr. ROGOVIN. That is correct. On the 26th, the Monday, I sent a memorandum, draft of a memorandum, prepared for the President describing the problem that the CIA faced, suggesting possible alternative approaches to some resolution of the problem.

This was sent to the White House on the 26th of January. I cite this as response to the question: Were we going to do anything about it?

Mr. MARSHALL. May we have a copy of the letter that you sent to Mr. Pike for the record?

Mr. ROGOVIN. Yes, certainly. I would also like to make this letter to the White House part of the record, but I would caution that there is a portion of it that refers to "thinly veiled references" within the select committee's report to certain activities, because I then pierced the veil in the memorandum by stating them.

Mr. BENNETT. This material will be received for the committee's records.

[The material was received for the Committee records.]

Mr. ROGOVIN. May we substitute copies for this?

Mr. BENNETT. Surely.

Mr. MARSHALL. On the 27th you also had a conversation with Mr. Nick Horrock, did you not?

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. Could you go into the details of that conversation?

Mr. ROGOVIN. Yes. Horrock called—

Mr. MARSHALL. Can we identify him for the record? I am sure we all know who he is.

Mr. ROGOVIN. Nick Horrock is a fine investigative reporter for the New York Times. He called some time I believe on the 26th, no, on the 27th, and was discussing the report with me. He was asking questions about it. I told him "Look, we are sick about this, and I am not going to discuss any of the specifics."

One of the things that I found very troubling was the fact that the Senator Jackson memorandum had appeared as a footnote in the second edition. It had not been in the first edition. That struck me as political mischief rather than a significant revelation of wrongdoing on the part of any of the intelligence community.

Mr. MARSHALL. Could I interrupt you there?

What do you mean when you say "edition"?

Mr. ROGOVIN. Edition?

Mr. MARSHALL. Yes, sir; you said it appeared in the first but not the second.

Mr. ROGOVIN. The reference to Senator Jackson appeared in the January 24 edition of the select committee report, but it was not to be found in the version that we received on the 19th of January.

Mr. MARSHALL. You mean draft of the select committee.

Mr. ROGOVIN. Draft.

Mr. MARSHALL. When you say January 24, that was the date you received the January 23 draft.

Mr. ROGOVIN. That is right.

Mr. MARSHALL. Now that we have gotten all those dates straight, proceed.

Mr. ROGOVIN. Mr. Chairman, at this point there have been frequent references to the draft dated January 23, and also there have been frequent references to the draft dated January 24. I think if my recollection is correct that that was the date, the 23-24 time frame, where the committee staff and representatives of the Agency worked late and therefore covered both dates.

Mr. MARSHALL. Was there in fact a draft dated both 23 and 24?

Mr. ROGOVIN. I am not aware of any draft dates. What I am aware of are the days that we received distinctive drafts. My references have been to the January 19 draft as being the one that was given to me on January 24 by Congressman Aspin which I have referred to in a shorthand fashion, as the 24th edition. My testimony should be read with that in mind.

Now going back to the Horrock telephone call, what intrigued me was the now inclusion of the reference to Senator Jackson. My own view was that this was some sort of political mischief on the part of someone on the committee so as to cause it to appear in the second draft that we had received. I asked Horrock whether he realized that the Senator Jackson memorandum, was not in the first draft of the report.

Mr. MARSHALL. The January 19 draft.

Mr. ROGOVIN. That is correct. I asked him what footnote it was in his report, because there were two footnotes 119 in our January 24 draft.

Horrock and I were on the telephone and I don't know what he had in his office. He got off the phone for a few seconds, and returned and said "The Jackson reference is at footnote 42-A." I had never seen a footnote 42-A, but when you read the text the reference to the Senator Jackson memorandum could well have fit in at that point in the January 24 copy. That is all I know about the possibility of still a different edition or at least a different page with respect to that particular footnote.

Mr. MARSHALL. We can pursue that a little further.

Am I correct in understanding that when the John Crewdson article appeared on January 26, there was a statement in there referring to a copy of the select committee's report which was in the possession of the New York Times?

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. Then with your conversation with Mr. Horrock, as well as the pause when you asked him about the reference to the footnote, the Jackson footnote, and when he came back with a new footnote No. 42-A, was it your inference or your present implication that he was consulting a copy?

Mr. ROGOVIN. Yes.

Mr. MARSHALL. Is that a conclusion that it is possible to draw?

Mr. ROGOVIN. That was my feeling. He did not go through a charade; He, in fact, had a version of the report at that time.

Mr. MARSHALL. Did you make any inquiry of Mr. Horrock as to where he got his copy?

Mr. ROGOVIN. I did not, simply because I considered it to be a useless effort.

Mr. MARSHALL. Why was that?

Mr. ROGOVIN. I would put the question to you, Mr. Marshall, why have you not called and asked? It has been my experience representing reporters for a number of years that I would not have gotten the answer. I did not wish to embarrass him by even asking the question because I was confident that I wasn't going to get the answer.

Mr. MARSHALL. During the course of the Select Committee on Intelligence deliberation, did it come to the attention of the CIA that there were certain leaks of classified information which were appearing in the press?

Mr. ROGOVIN. Yes.

Mr. MARSHALL. Without regard to where those came from, just the leaks were there?

Mr. ROGOVIN. That is correct.

Mr. MARSHALL. Did the CIA or the executive branch initiate any investigation within its own confines, to determine if the executive branch or the CIA was a possible source of those leaks?

Mr. ROGOVIN. Let me give you one specific example of precisely what happened. On a Saturday, I believe it was the end of October, the very end of October, and I will be able to date it better as I detail the story. At about 4 o'clock in the afternoon I received a telephone call from Daniel Schorr. He told me that he would be on the evening news, with the following story. He then proceeded to read a short piece, about a minute-minute and a half of text, relating to a subject that the CIA had briefed the House select committee on either the week before or within the last 10 days. It was a very sensitive matter.

I didn't realize that he had finished reading his story. I thought he was editorializing or commenting because he said something about legal authority. I said "That is nonsense." He was talking about a legal issue rather than a factual issue at that point and I said that was nonsense. He said "No, that is what the committee told me."

He then wanted to know if the CIA had any comment as to the substantive factual matter. His newscast is a matter of public record; he talked about the Kurds. I told him we had no comment.

I then tried to reach Searle Field. He was not available. I found the chief counsel of the committee, Aaron Donner, in New York. I called the Schorr story to his attention immediately, and told him that I had just received this phone call from Dan Schorr. I told him that there was no question in my mind but that Schorr was about to go on the air with material that had, in fact, been briefed to your committee within the last 10 days, and that you ought to take such appropriate action as your committee feels it should.

I then called the Director of the CIA and I told Bill Colby. The weekend is very vivid in my mind because the next day Colby was fired, and when he was leaving the White House he met Jim Schlesinger. Schlesinger wanted to know why he was there. He said, "The Kurd story." That is a vivid anchor to my memory. That is one example.

Mr. MARSHALL. Excuse me. The question though was: Did the CIA make any investigation within its own or within the executive branch to determine if it was the source of leaks to Mr. Schorr, when leaks such as this came to his attention?

Mr. ROGOVIN. There was no formal investigation that I was aware of. There was another instance which can be detailed in executive session, but it is sufficient to say that as far as the executive branch was concerned, the matter was turned over to the FBI and an inquiry was opened by the Federal Bureau of Investigation. We were very mindful in the CIA of the restriction on the CIA being involved in domestic investigations, and would turn such information over to the FBI when this material came to our attention.

Mr. MARSHALL. Going back to your conversation with Mr. Schorr that you alluded to earlier, did he use the words "the committee told me?"

Mr. ROGOVIN. Yes.

Mr. MARSHALL. "The committee told me?"

Mr. ROGOVIN. Yes, that was the matter that was surprising, because I thought he was making a legal analysis, and I was challenging him. I said "You are dead wrong," and he said "No, that is what the staff," I think he said "the staff told me." The only thing I came away with was the immediate impression, which I transmitted to Donner, that the story that he was about to go on the air with emanated from the committee. I use the term "committee" in the generic sense, not limiting it to whether a member or staff.

Mr. BENNETT. Do you think he said "staff?"

Mr. ROGOVIN. I am not in my own mind today prepared to say whether he said staff or member, but it was generically the committee, without a distinction.

There is one further case which I believe we would submit to you in executive session. We can give the documents to you other than to describe them at this time.

[The documents were received in executive session.]

Mr. BENNETT. Would you like to go back in executive session?

Mr. MARSHALL. Just for housekeeping purposes then, we have two matters that we need to take up in executive session.

Mr. ROGOVIN. Yes.

That is dated as a CBS news story of December 19, 1975.

Mr. MARSHALL. We will make appropriate arrangements to receive those in executive session.

Mr. ROGOVIN. Mr. Daniel Schorr stated in an article in the Rolling Stone, the publication, of April 8, 1976, that he had possession of the alleged committee report or a draft of that report on January 25, 1976.

Did you give this report or a draft of the report or any part of the text of the report or of the draft to Mr. Schorr or to any other person?

Mr. ROGOVIN. I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. ROGOVIN. I do not.

The tag end of your question was "any other person?"

Mr. MARSHALL. Yes, sir.

Mr. ROGOVIN. Other than those I have described in the formal testimony at the outset.

Mr. MARSHALL. Other than your testimony here, did you give the report—

Mr. ROGOVIN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. ROGOVIN. No, I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or a draft of that report or a portion of the text of the draft or the report to anyone outside of the Select Committee on Intelligence or outside of the Central Intelligence Agency or the executive branch as you have already testified?

Mr. ROGOVIN. No, I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. ROGOVIN. No, I do not.

Mr. MARSHALL. Did you divulge any part of the select committee's report or a draft of the report or any portions of the text of the draft or the report to any member of the media or anyone acting on behalf of the media?

Mr. ROGOVIN. No, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. ROGOVIN. No; no, I do not. The delay was only to broaden my thinking—

Mr. MARSHALL. Your pause intrigues me and I wonder whether it is significant.

Mr. ROGOVIN. I was trying to separate out everything that I have read in the newspapers about it. There was something about Mr. Field, I believe, giving materials but I think I read it in your transcripts so you know about it.

Mr. MARSHALL. Anything other than what may have been already brought to the attention of this committee that may have appeared in the newspapers?

Mr. ROGOVIN. No, I do not.

Mr. BENNETT. Mr. Chairman, questions?

Mr. FLYNT. Mr. Rogovin, if you can answer this question in public session, I hope that you will do so, so that the public record may contain the answer which I have reason to believe you will give.

On the other hand, if you feel that this question cannot be answered in public session, would you please so state?

The question is, Why does the intelligence community feel that it is imperative to keep secret methods of intelligence gathering, names of agents, places where intelligence may be gathered, and places where events have taken place?

Mr. ROGOVIN. Mr. Chairman, it's fundamental to an effective foreign intelligence operation to be able to assure those whose lives and fortunes are at stake, that their cooperation will not be denigrated, made public, or cause them possible harm, physical or financial.

It's also extremely important that when this Nation's intelligence services deal with the allied nations' intelligence services and secure information under a pledge of confidentiality that our word be accepted by our allies so that they may assist us in mutual goals. If material is then made public, why, that undercuts the relationships that have existed over many years.

As far as sources and methods of intelligence, it's extremely important to deny our adversaries information that would assist them in making more secure their own secrets for it is CIA's job to find out other people's secrets.

Mr. FLYNT. I believe you stated a great deal of intelligence information comes from allied governmental sources.

Mr. ROGOVIN. A substantial amount.

Mr. FLYNT. If those allied governmental sources were to be identified, public, what would be the effect on future cooperation between the intelligence gathering agencies of this country—

Mr. ROGOVIN. It would be substantially chilled and in certain instances I am confident it would be terminated. I think this last 18 months has been a very trying one for our allies in the intelligence business. They watch with not bemusement but rather incredulously as our Nation's secrets appear in our newspapers.

This is something that they are not familiar with. They are not familiar with, in some instances, constitutional government. They don't understand how this could occur. It is a very traumatic event for quite a number of our allies.

Mr. FLYNT. I hope I am not treading on a close borderline question with this next one. If I am, stop me at any point during the posing of the question.

Is it also correct that a substantial amount of intelligence is obtained by the U.S. intelligence community from individuals who are foreign nationals?

Mr. ROGOVIN. That is correct.

Mr. FLYNT. It would be devastating, would it not, if the names of such foreign nationals were to be publicly divulged?

Mr. ROGOVIN. Absolutely and there have been a number—

Mr. FLYNT. And if you can, would you elaborate on your "absolutely" answer.

Mr. ROGOVIN. Yes.

There have been a number of instances during both the Senate and the House select committees' inquiries where the subject of the investigation got to a point where you are down to absolute marrow, and senior officials of the Central Intelligence Agency flatly said they would resign rather than to give that information. They would not, in fact, give information which related to names of either cooperating Americans or cooperating foreign nationals.

You are, in fact, playing with life and death, and they drew an absolute line when it came to that type of cooperation. Fortunately, we were able to deflect such lines of questioning and give alternative types of information. I can say no names were given.

Mr. FLYNT. Am I correct in my assumption that what you have just outlined is not an innovation in intelligence gathering, but has been historically true?

Mr. ROGOVIN. That is correct.

Mr. FLYNT. Thank you, Mr. Chairman.

Mr. BENNETT. Mr. Spence.

Mr. SPENCE. Thank you, Mr. Chairman.

In following up on what Mr. Flynt said, sometimes some information might not in itself or by itself appear significant, and we have

had people make light of the fact that these insignificant things could not be released by your people.

Can you give us any other reasons why things which might not appear significant can't be released just in general?

Mr. ROGOVIN. Yes.

Mr. SPENCE, let me give you a hypothetical example.

Assume that there is a Soviet vessel in the middle of the Atlantic and there was a mutiny aboard that ship. When that ship returns to harbor quite a number of people are going to know about that mutiny.

The question of classification in this instance relates to timing. If the mutiny took place 45 minutes ago and I tell you as a member of the oversight committee this is what has taken place, and then that information is leaked and is in the press within a short time. Then the Soviets have a serious leg up to determine how it is that we know what is going on on their vessels 45 minutes after it occurs.

If a month later the fact that a mutiny took place on a Soviet warship becomes a matter of public knowledge, it has no intrinsic security value to it any more.

The important security information was the timespan.

Mr. SPENCE. Location sometimes——

Mr. ROGOVIN. Locations.

Mr. SPENCE [continuing]. Confirms where it came from.

Mr. ROGOVIN. The one thing, Mr. Spence, that I learned, and I think I pointed out that I am not a classification expert, for, I did not classify or declassify items, is that you have to go to the man who has the specific knowledge in each individual case to determine whether something is declassifiable. If he is on top of his file, he knows and can tell you. The mere fact that someone else has been in the agency 25 years or even 50 years is not relevant. Unless he is familiar with that particular source of information and how it was secured, he would be an inappropriate person to be involved in declassification.

That is why the process is very time consuming.

Mr. SPENCE. There is another good point, too, that has been brought out and that is that some people say: "Well, it has already been made public knowledge, so what is wrong with putting it out again or acknowledging that this is the case."

Isn't there good reason sometimes for not even doing that?

Mr. ROGOVIN. Oh, certainly. The New York Times, is as fine a newspaper as one can read in this country. Nonetheless, it is not speaking for the United States and it is not an authoritative source.

There is a difference between something that is alleged to be a fact and the imprimatur of the U.S. Government being placed on the particular fact, and that's all the difference in the world.

Mr. SPENCE. I have heard the example given of, say, the specifications and critical information relative, say, to the F-14 fighter might appear in Aviation Weekly so they say it is already out in a periodical, so what is wrong with us putting it out?

But what you are doing is confirming the fact that those figures are correct, aren't you?

Mr. ROGOVIN. That is correct.

Mr. SPENCE. Lastly, you said on page 14 of your prepared statement that there was a memorandum specifying 88 differences. Did you sit down with the staff or your people and try to work out these

differences, changing language or declassifying and going back and finding the source and been able to declassify some things in an effort to help the committee with the report?

Mr. ROGOVIN. Well, the differences that were referred to at page 14 are simply differences, found by way of a comparison of two texts. The items that we wanted to change, we were quite anxious to work with the staff.

Mr. SPENCE. I mean to change.

Mr. ROGOVIN. When it came to changes, yes, we gave alternative language on many occasions to the staff. On some occasions it was accepted by the committee.

Mr. SPENCE. That is all I have.

Mr. BENNETT. Mr. Quie.

Mr. QUIE. In the leaks that occurred prior to the report itself did the CIA investigate where those leaks may have come from?

Mr. ROGOVIN. The CIA was meticulous in avoiding any type of domestic investigation. Internal inquiries were made. There was one particular instance that didn't relate to the House—it related to the Senate—where we were concerned as to whether the CIA was the source of a leak and there was an internal inquiry. The Director was satisfied, however, that it was not from the CIA.

But where there were leaks, we brought it to the attention of the committee chairman or staff director, as well as the Department of Justice.

Mr. QUIE. And if there was any suspected leak from members of the committee, the staff, the White House, or the State Department, then you would not have been involved in the investigation there?

Mr. ROGOVIN. We were not involved in any investigation, that's right.

Mr. QUIE. That is all.

Mr. BENNETT. Mr. Mitchell.

Mr. MITCHELL. Thanks, Mr. Chairman.

In earlier testimony, Mr. Rogovin, several staffers and I don't know whether members did, too, but pointed to the fact that they thought that our intelligence agencies overclassified greatly and they said one of the reasons they used the classification system was to hide misdeeds and incompetence.

To your knowledge, in all the documents you have seen is it the common practice of intelligence agencies?

Mr. ROGOVIN. No.

I will agree with the first part of the statement that there are many things that are currently classified that ought not to be classified. Frequently that's just a question of the passage of time. The bureaucracy would be so enormous if you had enough people to go back and review the documents that were important, such as my mutiny example. That was top secret for that week, but by the end of the month it no longer was classified.

It would require someone to declassify that document. There is no question that we are inundated with documents that ought not to be classified.

One way that that process is being winnowed down is through the Freedom of Information Act which causes the Agency to take a look at older documents and frequently say that, "Yes, it was classified but

it is now declassified because the passage of time has made that no longer a significant matter."

I am not aware of any instance where the classification was based on wrongdoing. The classification was based on the facts at the time.

Subsequently those facts might also relate to something that was improper for the Agency to be involved in, such as mail opening, but I don't believe it was classified because it was criminal. It was classified because it was a secret of the Nation's at the time.

Mr. MITCHELL. We have heard the discussion of the meeting of January 22 when there apparently was a big rush to try and eliminate many of the documents, many of the portions in the final report that were sensitive, sensitive material.

Do you recall, roughly, just to quantify the situation, how many points or how many areas you did want to remove from the document? The number 240 rings a bell with me and I can't recall whether that was true.

Mr. ROGOVIN. The initial transmittal on January 20—that's after the review of the draft we received on the 19th—contained approximately 80 pages of comment. This is the document that was sent to Chairman Pike.

Some of this material is rather extensive because it contains editorial comment as to what was wrong, why it should be classified. We are not talking about 80 pages of text in their report.

Mr. MITCHELL. Do you remember a number like 240? I am trying to determine what sort of cooperation or communication there was between those of you who were trying to eliminate sensitive material and those who wanted to maintain most of it in the report.

Mr. ROGOVIN. I vaguely recall a rough percentage that we used that perhaps as much as 80 to 90 percent of our concern had not been touched. There had been lots of changes but the changes were not of the magnitude that we were concerned with. The largest number of pages dealt with a report, dealt with a portion of the report, dealing with covert action. The President, 5 days before the first draft was made available, had certified that it would be detrimental to the national security if that material were published. Four days later that very material was in their draft.

Mr. MITCHELL. You mentioned when you discussed the agreement with the President that the agreement also provided for a judicial review if the select committee wished to contest the President's determination.

Mr. ROGOVIN. Yes.

Mr. MITCHELL. Was that judicial review ever put into operation?

Mr. ROGOVIN. No.

I think that was more of an idle threat for both sides. The question was, if there was an objection by the Agency to the publication of something and the committee still wanted it, it would go to the President. Then if the President certified that it ought not to be made public, there was the question of who had the final word. To leave the situation in a fashion that was most palatable to both the executive and the legislative branch we said that if there was a dispute it would go to the judicial branch. In light of the time that this committee had to complete its work, I don't believe they ever anticipated going to court.

Mr. MITCHELL. You mentioned also the Chairman didn't believe that the prior agreement with the President related to the final report and you obviously did. Can you shed any light on why the Chairman didn't or why when you were making the agreement someone didn't address themselves to the final report?

Mr. ROGOVIN. There was a hiatus from September 11 until the end of that month. During this period of time there was heightened concern, both from the executive and legislative branch about prerogatives, who had the right to publish. The solution was a very statesman-like solution and I believe Chairman Pike is to be congratulated for having agreed to it.

When he brought it back to his committee it is my understanding that some of the committee members were outraged that they had, in effect, sold out so cheaply because the issue of whether the Congress has the right to publish documents obtained from the executive branch was diluted. The right seemed to have been washed away, and I understand that one member would not speak to the Chairman for a week because of what he thought was a sellout. It was my understanding that the Chairman regretted having entered into that agreement and during the ensuing period of time sought an opportunity to challenge the President's agreement and, indeed, used one example, the three covert action reports which they wished to publish in December. When the President said that he found that would be inimical to national security, the committee put that very material in their report and the Chairman merely said that this was not part of the agreement.

Any fair reading of the history of the agreement could not reach that conclusion.

Mr. MITCHELL. You mentioned that you had a good accounting of the January 24 document.

How many copies did you make of the Aspin report? Do you recall offhand?

Mr. ROGOVIN. Thirty.

Mr. MITCHELL. When you say you "secured an accounting," what does that mean? Do you know whether they had all been destroyed?

Mr. ROGOVIN. After the report that we received on January 24 became an important issue and the House decided not to allow the report to be published, there was concern that the report might be made the subject of a Freedom of Information request. I asked that all the holders of the report return it to the CIA so that if anyone had to face the Freedom of Information request it would have to be us. I was also concerned about something else. When I received the report from Congressman Aspin I thought I was under a pledge of confidentiality and I was not about to divulge who the Member was who gave me the report.

I believe he has explained to you the repartee when I told him that I was writing an affidavit and I would not put his name in it. The following day he called me and he said, "Say, I have been thinking about that. Why is it that you weren't going to put my name in."

I said, "Because I thought you gave the report to Dan Schorr."

He said, "I'm OK. Are you OK?"

I said, yes, I was OK. So that issue dissolved that right there.

Mr. MITCHELL. One final question, Mr. Rogovin.

You mentioned on the last page of the report:

In dealing with the Senate Select Committee, I felt comfortable that the procedures had been adhered to for the protection of classified material. I must, however, in all candor state that was not the case in my relationship with the House Select Committee.

What happened? What was different between the House committee and the Senate committee, just for the future so maybe we can put a better package together down the road some place? What happened?

Mr. ROGOVIN. The House select committee started off on very shaky ground, as you recall. You had one Chairman who was withdrawn. The House committee came into being 6 months after the Senate committee had already begun its work. The Rockefeller Commission had just finished its report. There were 120-some-odd Members of the House of Representatives who voted against the formation of this committee and it had 6 months to do its work. It had many problems stacked against it at the very outset.

The Chairman, I believe, felt that the largest problem he faced was that his committee would be viewed as having been co-opted by the CIA, a charge that had been made with respect to his predecessor, and he took an extremely hard line in all of his dealings at the very outset.

The first thing that we did when the new committee was formed was to write a letter to the chairman outlining procedures that had been worked out with the Senate select committee and giving Chairman Pike the advantage of our experience and, indeed, Senator Church's experience as to how procedures could be worked out.

The Chairman would not accept any of the procedures and, indeed, every time we had a conference it turned into a head-on confrontation. There was an awful lot of disputation and confrontation in those early days.

When we raised the question of what kind of a security check or clearance would be made of the staff, we were told it was none of our business. We understand the separation of powers and we understand what congressional committees believe they should legitimately do. We merely wanted to render some assistance because we knew they were short of time.

We suggested that some of the people from the security staff of the CIA may be of some assistance in helping the committee staff determine whether their facilities were sufficiently secure, to sweep the hearing rooms in case of bugs or transmitters and similar problems familiar to the CIA.

All of this was rejected. When it came to classified material that was compartmented, where you needed special clearances to enter into these compartments, the Chairman refused to have any of the staff go through the briefing or the security features of compartmented clearance.

These were all extensive and abrasive early relationships, I am afraid they continued through the hearings. This was not the case in our dealings with the Senate select committee, in our dealings with the Rockefeller Commission before that, or with the CIA's 27-year history of dealings with other congressional committees.

So, I do believe it was a very unusual, but a very abrasive relationship.

Mr. MITCHELL. I have no further questions, Mr. Chairman.

Mr. BENNETT. Aside from the fact that some of the material published in the Village Voice came from secret and top secret papers, did the actual material published in the Village Voice contain secret and top secret material?

Mr. ROGOVIN. Yes, it did.

Mr. BENNETT. I have no further questions.

Mr. FLYNT. I have.

I have one question, Mr. Chairman.

Mr. Rogovin, I may take the liberty of qualifying you as an expert witness for the purpose of this next question because it is going to require you to give your opinion and perhaps your recommendation.

Do you feel that some statutory law would be desirable to determine who has the authority to classify documents and how that classification process should be completed and implemented?

Mr. ROGOVIN. Yes; I think this is one of the most significant areas of legislation and an area that has been ignored by both the House select committee and the Senate select committee in their deliberations.

I believe that whatever is a secret for the executive branch should be a secret for the Congress and vice versa. If you are going to have effective interchange of information, it has to be on the same basis that that which is secret and highly classified for the CIA will be treated in the same fashion by the staff and the Members of the Congress when they deal with the same information.

Mr. FLYNT. Do you feel that such a statute if properly composed and enacted after being properly composed would have a double-barrel beneficial effect not only in legally defining what can and what cannot be disclosed, but also in bringing about a smaller volume and a reduced number of classified documents?

Mr. ROGOVIN. I would hope that that would be one of the goals of such legislation.

Mr. FLYNT. That both of them would be?

Mr. ROGOVIN. That is correct.

Mr. FLYNT. I have no further questions, Mr. Chairman.

Mr. BENNETT. I will now turn to Mr. Marshall.

We do have a vote.

Mr. FLYNT. Could we suspend? I suggest if I may, that we suspend at this time, answer the rollcall vote. Then I think we may be able to finish with Mr. Bolten and the remaining witness.

Mr. BENNETT. All right.

[Brief recess.]

Mr. FLYNT. The committee will come to order.

Does any member of the committee have additional questions they would like to ask Mr. Rogovin?

Mr. HUTCHINSON. Mr. Chairman, I had the one question that I suggested that I thought ought to be asked. I will be glad to ask it.

Mr. Rogovin, as a matter of fact, did the publication of the report in the Village Voice actually damage national security?

Mr. ROGOVIN. The Director of Central Intelligence has, on a number of occasions, indicated that that was the case. I don't believe that I am in a position to personally make that kind of evaluation as to whether there has been damage or the extent of damage. It is my understanding, however, from senior officers of the Central Intelligence Agency that it has affected relationships with foreign liaison services,

and that there has been damage as the result of the identification of material that our adversaries would benefit from.

Mr. HUTCHINSON. I thank you for your answer.

Thank you, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Hutchinson.

Mr. ROGOVIN. Mr. Chairman, I believe the counsel, Mr. Marshall, had asked a question that I was unable to answer with respect to if you took the 19th version and the 24th version, and put them together, would they make the Village Voice version. I have been told by one of the men on review staff who actually did that. He concluded that you do not get the Village Voice version by taking those two editions that we had access to.

Mr. MARSHALL. Is there any analysis that would go to support that conclusion that you could file with the committee, either in executive session or public session?

Mr. ROGOVIN. We do not have a written analysis. What we have is the 88 items in the version dated the 24th for our purposes, and an analysis of the version of the 19th. The gentleman doing the work said that you cannot end up with the Village Voice edition by adding the language of the January 19 edition.

Mr. MARSHALL. Is the gentleman doing the work being made available to testify to this committee?

Mr. ROGOVIN. He can be made available to testify or for interviews, any way you would wish.

Mr. MARSHALL. Would he be willing to provide affidavits to that effect?

Mr. ROGOVIN. Yes.

Mr. MARSHALL. Very well, sir. Let the record show that a member of the staff of this committee will contact the person, have you identify the person first, and then contact him for an affidavit. In the event that the committee should determine that further testimony in addition to the affidavit should be made available, we will then be in touch with you to arrange that testimony.

[The affidavit was received for the committee records.]

Mr. Bolten, you recall you are under oath.

Mr. BOLTEN. Yes, sir.

Mr. MARSHALL. Do you have any further statement you wish to make to the committee in the light of Mr. Rogovin's responses to questions or in light of any matter pertinent to the subject of this inquiry?

Mr. BOLTEN. No, sir. I believe that I said all I wanted to say in my short statement a while ago.

Mr. MARSHALL. Directing your attention to page 7 of Mr. Rogovin's opening statement, and the reference there to the meeting of January 22 at 6 p.m., in which Mr. Rogovin stated that you as chief of the review staff went in Mr. Rogovin's place to attend the meeting to continue the process of reviewing the classified material contained within the draft report, do you see the place of reference there, sir?

Mr. BOLTEN. Yes.

Mr. MARSHALL. Did you take Mr. Rogovin's personal copy which he identifies there to that meeting?

Mr. BOLTEN. Yes, I did.

Mr. MARSHALL. And did you take that personal copy with you from that meeting and turn it over to the CIA Operations Center for overnight storage as he indicates in the statement?

Mr. BOLTEN. To be precise, Mr. Gregg and I drove back to the CIA headquarters. I waited in my car. He took the copy up to the operations center to store it overnight in secure storage. We both took it back, but he took it up to the secure area.

Mr. MARSHALL. Did you or Mr. Gregg, either one, take any other copy of the January 19 draft or any changes to that draft from the meeting?

Mr. BOLTEN. Absolutely not.

Mr. MARSHALL. Based on the CIA analysis, was there classified information in the Village Voice publication dated February 16 and February 23?

Mr. BOLTEN. Yes, there was.

Mr. MARSHALL. Would you tell what the range of classifications were in that publication?

Mr. BOLTEN. From confidential to top secret, however, mainly secret.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give this report of the select committee or a draft of the select committee report or any part of the select committee report or draft to Mr. Schorr or to any other person?

Mr. BOLTEN. Absolutely not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BOLTEN. No, I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee report or the draft of the select committee report or a portion of the text of the select committee report?

Mr. BOLTEN. Nothing other than what I have read in the newspapers.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. BOLTEN. No, I do not.

Mr. MARSHALL. Did you give the select committee report or make any part of the select committee report or a draft or a text of the select committee report available to anyone outside of the Select Committee on Intelligence other than the testimony that has already been developed here with regard to distribution within the executive branch?

Mr. BOLTEN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BOLTEN. No.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. I can think of just one thing, Mr. Chairman.

Mr. Bolten, how long have you been with CIA, can you tell me that?

Mr. BOLTEN. Yes, sir, I did make the statement, I think you were absent at the time, 27 years.

Mr. SPENCE. That is all.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No further questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

We heard in earlier testimony that it requires individuals who are steeped in intelligence in a given area to make a judgment of whether or not a document is properly classified. In your professional judgment, Mr. Bolten, did the staff have adequate background, the staff of the Select Committee on Intelligence, to make such judgments?

Mr. BOLTEN. I would have to say no, sir. It was, let's say, rudimentary.

Mr. MITCHELL. Their qualifications were rudimentary, you say?

Mr. BOLTEN. Some people had more experience than others or perhaps even better judgment, but on the whole I would question their qualifications. Moreover, I must say, as Mr. Rogovin pointed out, even if one is in the intelligence business, and I think I qualify as a professional, I wouldn't presume to know for certain when information is classified. I could judge it or sense it, but I would have to go to the person who was actually dealing with that information at that particular time, and on that particular subject. In fact, when we decided to make a review of the Village Voice, I didn't just sit down in my room with a couple of people and say, "What is classified and what isn't?" What we did was to ask each element of the Agency, each component and other agencies in the executive branch, to review the Village Voice and to tell us what they considered to be classified. It was on the basis of their responses that we determined what was classified in the Village Voice.

Mr. MITCHELL. So you would have to know a great deal to know that you don't know.

Mr. BOLTEN. Exactly, sir; yes, sir.

Mr. MITCHELL. The Village Voice issue that had most of the classified material within it, could you give me the percentage of the Village Voice that contained classified information? Would it be a third or a tenth?

Mr. BOLTEN. No, sir, not that much. I would say about 20 percent.

Mr. MITCHELL. Twenty percent of the document?

Mr. BOLTEN. Twenty percent of the space, of the print, lineage, would have been classified. The first third of the report contained almost nothing classified. It had a lot of comments about the Agency in it, mostly unpleasant, but nothing that we would have considered classified. It was the second half of the document that contained most of the classified information.

Mr. MITCHELL. Is that because of the rush at the end that you didn't really have time to sit down and go over all the details, that there was a deadline to meet, and so there wasn't time to adequately evaluate the remaining material, or was it just coincidence?

Mr. BOLTEN. As Mr. Rogovin has stated, the first problem was that we had 1 day in which to prepare our comments, and 1 day in which to negotiate them. You have heard about this wild evening of the night of the 22d and 23d, which was more like a boiler room than a thoughtful discussion. That is the first thing. You just can't do this kind of work in a hectic, tense atmosphere. It takes some judgment and it takes negotiation. We could have worked out some additional wording that would have made it possible to declassify a number of additional items, but time didn't permit.

Mr. ROGOVIN. Mr. Mitchell, let me add to this. As an attorney representing a client, I wanted to bring the experts to the staff and to the committee, to demonstrate the importance of some of the arguments that I was making. I asked a three-star Air Force general, who headed up NSA, to come down to make the arguments. I didn't feel qualified to make the arguments. The staff said: "We are not interested in what he has to say. Let him stand out in the anteroom." I made it clear to

them that General Allen is the person who should be in here and he will make these points. They had no time for General Allen. It was an attitudinal issue at the end.

In my point of view, the Nation's secrets can ill-afford to be maltreated in a last-minute flurry to meet a publication deadline. I think this is where we got hurt, and hurt badly.

Mr. FLYNT. Mr. Mitchell, would you mind yielding to me at that point and then I will give it right back to you?

Did that in your mind reflect an attitude on the part of the select committee staff that they did not want the facts?

Mr. ROGOVIN. That they had an artificial deadline, and I would have to assume that if the committee asked the House of Representatives for 10 more days, that it would have been granted. We saw the same thing happen on the Senate side and of course it was granted. The process was a long process, but the product that the Senate Select Committee got out was a product that we were satisfied with. We had some heated debates, but no one ever lost their civility in the process. Everyone had their eye on what the purpose was. We found ourselves in a very different situation with the staff having an artificial deadline, and the committee unwilling to extend it. We compressed into a 48-hour period something that should have taken 2 weeks.

Mr. FLYNT. I return the questioning to Mr. Mitchell.

Mr. MITCHELL. During those last hectic days, did you have ready access to members, or was your contact almost exclusively with staffers?

Mr. ROGOVIN. It was with the staffers. In fact, I was shocked to see how Congressman Kasten was summarily treated by the staffers when he was sitting in on one of these sessions. He wanted to make certain points and they weren't prepared to listen to him either.

Mr. BOLTEN. If I could just add to that, when Don Gregg and I were there the night of the 22d, our points were noted. They would say "We will take it up with the committee tomorrow," but at no time was there provision for the Agency or the intelligence community to appear before the committee and argue its own case on the draft final report. The committee staff members were going to argue our case for us.

Mr. MITCHELL. To your knowledge, did they argue the case?

Mr. BOLTEN. I have no idea, sir.

Mr. MITCHELL. That was executive session.

Mr. BOLTEN. That was all executive session.

Mr. ROGOVIN. Let me give you an example of the contrary arrangement with the Senate. Whenever issues could not be worked out with the staff, Chairman Church provided for our ability to come before the full committee and take up each one of those issues, and I had my expert witnesses there who brought their expertise to bear on whether a particular item should or should not be published. That was not the case with the House select committee.

Mr. MITCHELL. Thank you.

Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Mr. Bolten, when you said earlier that the first third of the Village Voice publication contained some matter about the CIA that might not have been pleasant but did not contain classified information, you were referring, I take it, to the publication of February 23?

Mr. BOLTEN. Twenty-third, yes, sir.

Mr. FLYNT. Are there further questions of either Mr. Bolten or Mr. Rogovin?

Mr. Gregg, I think the committee has one or two questions it would like to ask you.

Would you stand and be sworn.

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth so help you God?

Mr. GREGG. I do.

TESTIMONY OF DONALD P. GREGG, EMPLOYEE, CIA

Mr. MARSHALL. Mr. Gregg, you heard my admonitions to the two previous witnesses. I believe you were present when that took place with regard to matters which had been called to this committee's attention if they involved classified information or executive sessions of the Intelligence Committee, if you were privy to matters that may intend to defame, degrade, or incriminate persons?

Mr. GREGG. Right.

Mr. MARSHALL. Mr. Gregg, you are with the Central Intelligence Agency?

Mr. GREGG. Yes, I am.

Mr. MARSHALL. Did you go to the meeting of January 22-23 which has been alluded to in previous testimony by Mr. Bolten and also Mr. Rogovin?

Mr. GREGG. Yes; I attended the first two sessions with Mr. Rogovin and the third late session with Mr. Bolten.

Mr. MARSHALL. And did you come away from the meeting of January 22-23 with any copy of the report other than Mr. Rogovin's personal copy which had been delivered to Mr. Bolten for taking to the particular meeting?

Mr. GREGG. No; I did not.

Mr. MARSHALL. Did you later receive a call from Miss Sheketoff the following day, that is during work hours of January 23?

Mr. GREGG. Yes; it was early in the morning on January 23.

Mr. MARSHALL. Would you tell us what transpired?

Mr. GREGG. She called up and stated that the House select committee was unable to locate one or two of the copies of their report, and she asked me if either I or Mr. Bolten had taken a copy of the report with us from the meeting of the night before. My reply was that I had not, but that I would check Mr. Bolten's briefcase to see whether he had. I then opened the briefcase which I had just retrieved from the Operations Center, and it contained only the personal copy of Mr. Rogovin which had been used during that session.

I told Miss Sheketoff that we did not have a copy of the later version of the report, and I suggested that she talk with Mr. Martin Packman of the Department of State who had also been at the meeting the night before.

Mr. MARSHALL. Mr. Rogovin has testified that Mr. Packman advised him that he had picked up a copy which had been loaned to him at the meeting, that he had taken that copy back with him to the State Department following the meeting of January 22-23 and placed it within a safe.

Did you ever talk with Mr. Packman to confirm that?

Mr. GREGG. No; I have neither seen him nor talked with him since that evening.

Mr. MARSHALL. At the meeting of January 22-23, were you given any changed pages for insertion in the copy of the select committee's draft which was then in Mr. Bolten's possession?

Mr. GREGG. No; I was not.

Mr. MARSHALL. Mr. Gregg, Daniel Schorr has stated in an article in the Rolling Stone on April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give this report or a draft of the select committee's report, of the text from the report or a draft of the report to Mr. Schorr or any other person?

Mr. GREGG. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. GREGG. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof or the publication of the draft or a portion of the text thereof?

Mr. GREGG. No, sir, I do not.

Mr. MARSHALL. Do you know of anyone who has this knowledge?

Mr. GREGG. No; I do not know of anyone having such knowledge.

Mr. MARSHALL. Did you give the select committee's report or make any part of the select committee's report or a draft of the report or any part of the text of the select committee's report available to anyone outside of the Select Committee on Intelligence, other than in addition to the testimony we have heard today, while you were present?

Mr. GREGG. No, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. GREGG. No, I do not.

Mr. MARSHALL. For the record, let the record show you were present during the entire testimony, in public and executive session, of Mr. Rogovin and Mr. Bolten.

Mr. GREGG. That is correct.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. This completes the witnesses who are to appear before the committee today with the exception of one witness who has asked that his testimony be taken in executive session.

The committee will without objection adjourn for the day, and will reconvene in this room at 10 o'clock tomorrow morning, Wednesday, July 28, 1976.

Let the record show that Messrs. Rogovin, Bolten and Gregg together with Mr. Cary who accompanied them may step down with the thanks of the committee. If we should need any one or all of you back, we will notify you and try to set a time mutually convenient.

[Whereupon, at 5:45 p.m., the committee was adjourned, to reconvene at 10 a.m., Wednesday, July 28, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

WEDNESDAY, JULY 28, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to recess, at 10:05 a.m., in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Bennett, Spence, Quillen, Hutchinson, and Mitchell.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, and Miss Jan Loughry, staff members; and Robert Carr, associate counsel.

Mr. FLYNT. The committee will come to order.

A quorum is present for the purpose of taking testimony and receiving evidence.

Ironically, the bells had rung before we went into session, but in accordance with our practice, the committee will suspend, and committee members will return following the completion of the quorum call.

[Short recess.]

Mr. FLYNT. The committee will come to order.

Our next witness is our colleague, Representative Ron Dellums from California.

Mr. Dellums, would you stand and let me administer the oath?

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DELLUMS. I do.

**TESTIMONY OF HON. RONALD DELLUMS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA, ACCOMPANIED BY
ROBERT BRAUER, ADMINISTRATIVE ASSISTANT, AND CHARLES
MORGAN, JR., COUNSEL**

Mr. FLYNT. Have a seat.

We welcome our colleague before the committee.

Mr. DELLUMS. Thank you.

Mr. FLYNT. We would first inquire if you have a statement which you would like to read to begin your appearance?

Mr. DELLUMS. I have no statement, Mr. Chairman.

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Mr. FLYNT. Are you accompanied by counsel?

Mr. DELLUMS. Yes, I am accompanied by counsel.

Mr. FLYNT. Would you identify your counsel for the record?

Mr. MORGAN. Charles Morgan, Jr., 604 Independence Avenue SE., Washington, D.C.

Mr. FLYNT. Mr. Morgan, we welcome you before the committee in your capacity as counsel for Congressman Dellums.

Mr. MORGAN. Thank you.

Mr. FLYNT. I believe you are also accompanied by Mr. Brauer—

Mr. DELLUMS. Yes.

Mr. FLYNT. Your administrative assistant?

Mr. DELLUMS. Yes, that is correct.

Mr. FLYNT. Let the record so show.

Mr. Brauer, we welcome you before the committee.

Mr. Marshall?

Mr. MARSHALL. Mr. Dellums, you are appearing here at the invitation of this committee?

Mr. DELLUMS. That is correct.

Mr. MARSHALL. Prior to appearing here, you have received copies of House Resolutions 1042 and 1053, have you not, sir?

Mr. DELLUMS. Yes, I have.

Mr. MARSHALL. As well as the rules of this committee, the investigative procedures adopted by this committee and a copy of Chairman Flynt's opening statement?

Mr. DELLUMS. Yes. The staff just handed them to me.

Mr. MARSHALL. Should you need to consult with them at any time, if you will just simply let us know we will be glad to give you the opportunity to do that, sir.

Mr. Dellums, have you produced to the staff any documents in your possession concerning the subject matter of this inquiry, specifically the work of the Select Committee on Intelligence?

Mr. DELLUMS. What was the first part of your question?

Mr. MARSHALL. Have you produced any documents in your possession?

Mr. DELLUMS. I don't have any documents relating to the committee.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence, or classified information, or information which may tend to defame, degrade, or incriminate any person, would you please advise this committee so that it may take appropriate and timely action under the Rules of the House of Representatives?

Mr. DELLUMS. I will be pleased to do that.

Mr. MARSHALL. Thank you, sir.

Mr. Dellums, you were of course a member of the House Select Committee on Intelligence; is that right, sir?

Mr. DELLUMS. That is correct.

Mr. MARSHALL. Did you receive a copy of the initial draft of the select committee's report, that draft being referred to as the January 19, 1976, draft?

Mr. DELLUMS. I received an initial copy of the draft. I can't verify the date.

Mr. MARSHALL. Do you recall how you received that copy?

Mr. DELLUMS. It was handed to me by staff.

Mr. MARSHALL. Do you recall what person handed it to you?

Mr. DELLUMS. No, I don't.

Mr. MARSHALL. Where were you when you received the copy? Were you in your own offices or in the select committee spaces or where?

Mr. DELLUMS. I am not quite sure. I would assume that I was in the committee.

Mr. MARSHALL. Was this draft the draft in two black folders? Do you recall how it appeared?

Mr. DELLUMS. It was in one black binder.

Mr. MARSHALL. One black binder.

Mr. DELLUMS. Yes.

Mr. MARSHALL. What did you do with that copy, sir?

Mr. DELLUMS. I read it about three times in gross detail and that is about it.

Mr. MARSHALL. Did you retain the copy?

Mr. DELLUMS. No, I did not.

Mr. MARSHALL. What did you do with it?

Mr. DELLUMS. I turned my copy back into the committee upon completion of my responsibility, which was to read it, work with the draft.

Mr. MARSHALL. Do you recall the person on the committee staff to whom you returned that copy?

Mr. DELLUMS. No. I just left it in front of my desk at the end of the appropriate session, whatever date it was.

Mr. MARSHALL. Did anyone else have access to that copy while it was in your custody other than yourself?

Mr. DELLUMS. No.

Mr. MARSHALL. Did Mr. Brauer have access to the copy?

Mr. DELLUMS. No, he did not.

Mr. MARSHALL. You assigned Mr. Brauer no duties with regard to reviewing the draft that was in your possession?

Mr. DELLUMS. No, I did not.

Mr. MARSHALL. Did you, after receiving the initial draft, receive changes to that draft from the select committee staff?

Mr. DELLUMS. Yes, during the sessions.

Mr. MARSHALL. Do you recall whether, when you received those changes, you turned over to the select committee staff pages from the original draft that the changes were supposed to be a substitute for?

Mr. DELLUMS. All of the pages were left each day at my workplace during the committee session. At the end of the committee session I left all the documents there.

Mr. MARSHALL. That would have been within the select committee spaces?

Mr. DELLUMS. Yes. You see, when I initially received the report, I read the report in detail, as I said, two or three times. After that, we began to work on the report. From that point, from the initial point that I had the report and read it in toto, I then left the report each day at the committee, at my workstation, so all the papers, whether they were 1st, 2d, 3d, or 15th drafts were all left there in the evening. I never took them with me.

Mr. MARSHALL. Would that also be correct with regard to the final draft, that is what has been referred to here as the January 23, 1976, draft of the select committee?

Mr. DELLUMS. That is correct.

Mr. MARSHALL. So, as I understand your testimony, you never really took the draft, any draft that you received, out of the select committee spaces; is that correct?

Mr. DELLUMS. Except when I initially got it, and I know I read it. I virtually completed the first reading in the cloakroom on the Democratic side of the House over in the corner alone was the first time I read the report, and then I brought the report back, I only picked up my copy each day when I came in.

Mr. MARSHALL. Was your copy identified by number in any way, sir, any copy you had of a draft?

Mr. DELLUMS. I don't recall any number.

Mr. MARSHALL. Were you required to sign for any draft that you received?

Mr. DELLUMS. No, I was not.

Mr. MARSHALL. Mr. Dellums, do you recall on or about January 20, 1976, hearing Mr. Field talking to someone on the telephone whom he referred to as Dan? Do you recall that conversation?

Mr. DELLUMS. No, I don't. I was never in a situation to hear Mr. Field talk on the telephone.

Mr. MARSHALL. You don't recall hearing Mr. Field make the following statement, and I quote:

"Dan, there is no way I am going to give you a copy of that report."

This would be in the select committee spaces on January 20, 1976.

Mr. DELLUMS. I don't recall that.

Mr. MARSHALL. Mr. Dellums, during the course of the select committee deliberations, did you move to have the staff or the individual members, that is the House of Representatives members of the select committee, cleared for access to the report?

Mr. DELLUMS. Yes.

Mr. MARSHALL. Would you explain for us, please, sir, your reasoning behind such a move, and what action was taken on it?

Mr. DELLUMS. I was initially very, very pleased that the House of Representatives saw fit to look into the allegations of extraordinary abuses on the part of our intelligence community. I was, secondly, very pleased to be appointed as a member of that committee.

I also felt, given the realities of committee assignment, and specifically the realities of this particular committee assignment, the magnitude of the allegations, the extraordinary nature of the information, that no one member alone, without staff assistance, could cull through the reams and reams of documentation and material that would be forthcoming during this inquiry. I must say in all candor that my thought was that if the House of Representatives, and specifically this committee, was very serious about looking at the allegations, and we weren't just playing games for the public, that we ought to do the best possible, conceivable job that we could.

My notion was that in order to do that job, we needed to have, each of us, at least one person cleared for classified information, to work specifically with the member, and in some instances, where the member could not review all of the material alone, that with that staff person, capable of looking at the material, the two persons together could do a hell of a stronger and more capable job than one member alone carrying not only the select committee responsibility, but, in most instances, two important committee assignments outside of that room,

plus all of the other various and sundry things that Members of Congress have to do, official or unofficial.

I made a motion with essentially the same argument, that this occur. The first time that I offered the motion——

Mr. MARSHALL. Could I interrupt for a moment?

Could you give us a time you are talking about when you brought this to the attention of the select committee?

Mr. DELLUMS. I don't recall the dates, but it was during the initial organization of the committee.

Mr. FLYNT. May I interrupt?

Prior to August, prior to the second organization of the committee?

Mr. DELLUMS. If my memory serves me correctly, I think I brought the matter up both times, with the initial Chair and with Mr. Pike, who subsequently became the ultimate chairperson of the committee.

Mr. FLYNT. You did it both while Mr. Nedzi was serving as chairman and also while Mr. Pike was serving as chairman?

Mr. DELLUMS. If my memory serves me correctly; yes.

Mr. MARSHALL. Perhaps it might be helpful to remind you that on July 17, 1975, House Resolution 591 was adopted by the House, and shortly thereafter Mr. Pike was appointed as chairman of the committee.

Mr. DELLUMS. I know right after that certainly I did make the motion. The majority of my colleagues did not support the amendment that I made, the motion that I made. However, as time went on and the burden of the responsibilities, the magnitude of the task before us became vividly apparent in the minds of a substantial number of my colleagues, many of them unofficially wanted very much to go back and redo the initial action, because they began to find out that it was very difficult for a member to handle all this material.

I still think that there was great wisdom in my motion although I was outvoted by my colleagues.

Mr. MARSHALL. I take it that the select committee never adopted your motion, that is to clear the staff of committee members.

Mr. DELLUMS. That is correct.

Mr. MARSHALL. You recall that after the select committee adopted the report on January 23, 1976, that the House subsequently voted to keep that report secret; do you recall that, sir?

Mr. DELLUMS. Yes; I do.

Mr. MARSHALL. That vote was on January 29, 1976.

Mr. DELLUMS. Yes.

Mr. MARSHALL. Did you make a statement to anyone in the meeting following the House action that the report should be kept secret, that you felt it likely that someone was going to leak the report?

Mr. DELLUMS. Yes.

Mr. MARSHALL. Would you explain the circumstances of that statement, including when, where and to whom, and what the reason was for your suspicion that someone might leak the report?

Mr. DELLUMS. Because I know this House, just like you guys leaked the issue of how you were going to handle Mr. Sikes. I mean this is a sieve here in some instances. Right outside the committee room there were several cameras, and normally I used to duck out the other way. I am not a press hound, but I happened to get caught that particular day, and they asked me what did I think. "Do you think the report will ever become public?"

Mr. MARSHALL. Was this on the 29th—excuse me. I am just trying to get a time.

Mr. DELLUMS. I can't tell you whether it was the 29th or the 30th or the 15th. That is all very hazy.

Mr. MARSHALL. That was when the House voted to keep it secret?

Mr. DELLUMS. Yes; they said, "Do you think the report will ever become public?" and I said, "Certainly," and they said, "How do you think it is going to become public?" and I said, "Someone will probably leak it." I had no crystal ball except that I think I know this place.

I also felt, I certainly cannot prove it, that it was in the best interests of the intelligence community to see the report leaked, and I honestly felt that it was going to be leaked, and if it was going to be leaked that the intelligence community was going to have something to do with it, because one way to move the House of Representatives off dead center, off the violations of constitutional rights, off the issue of violations of privacy, off the extraordinary abuses that we had documented for 9 months, it would have been in the best interests of the intelligence community to do it, and then some day in the future you would have you guys sitting there and members of the committee sitting here just as we are today, in what I consider in all candor, with all due respect to my colleagues, in an absurd exercise in futility, where the investigator has now become the investigatee, and the intelligence community is no longer being looked at and the press is no longer writing about the abuses of tens of thousands of American people whose rights were violated and who we documented in that report, and if the American people could ever see it, and if more than a handful of Members of Congress would ever read it, maybe we would get on with the business of reforming our intelligence community that I think has gotten far out of control, and many abuses that we documented probably are still taking place.

Mr. MARSHALL. You testified that you reviewed the initial draft of the report and the changes that were made before adoption of the final draft. You also were present during the select committee's deliberations and the assembling of that draft.

In your judgment was there classified information, either in the January 19 draft or in the final report of January 23, 1976?

Mr. DELLUMS. I did not—let me answer that in two parts. I think the final version of the report I did not believe contained classified information. The reason why I make that assertion is that we exhausted the opportunities for all of the various members of the committee to go almost line by line in the report, to go over individual members of the committee's objection to the report, statements in the report, words in the report, phrases in the report, footnotes in the report.

We went almost line by line with respect to each objection made by various administrative agencies, OMB, State Department, intelligence community, et cetera. It was an exhaustive process, Democrats and Republicans both engaged in this process.

By the time we finished, that report was laundered so thoroughly that I am not sure it even made a profound statement after that, but I think there was enough there for people to understand what we were investigating but I certainly in no way thought it was classified by the time we finished.

Now part B to the first part of your question, the second part of my answer. I would stipulate that there may very well have been classified information in the first draft of the report, and that is why the report was subsequently revised. Certain footnotes were deleted. Certain words were deleted. Certain phrases and sentences were changed, but I certainly did not think the final report was in any way classified. That was such a laundered document, that to call it a classified document would have been to give it a classification far beyond reality, I think.

Mr. MARSHALL. On what occasions did you meet with any representatives from the Central Intelligence Agency or the executive department to discuss the objection that those departments had about classified information in the report?

Mr. DELLUMS. They listed—two responses. First of all two responses. First of all, they listed—when I say “they,” I mean they in general.

Mr. MARSHALL. The executive branch in general?

Mr. DELLUMS. Yes, listed objections, objections, footnote so and so, page such and such, and we went down the list on that.

Second, I think virtually all of the various members of the committee were at one point in the latter stages of the investigation invited to Langley, Va. My first reaction was to become paranoid at the invitation, but having never been to Langley, Va., I was happy to go and take a look at that other world, and I met with William Colby and every one of the directors, with the exception of the Director of Science and Technology, for approximately 2 hours and at a 45-minute breakfast meeting which I found interesting and stimulating. There were many, many areas of obvious disagreement.

Mr. MARSHALL. What is the date on that, sir, or rough time so we will have some idea of what time this meeting occurred?

Mr. DELLUMS. I don't recall the date but I am sure they have it.

Mr. MARSHALL. Was it before January 1, 1976, or was it during the time the select committee was actually considering a draft of its final report?

Mr. DELLUMS. I think it was some time after January 1.

Mr. MARSHALL. Do you recall whether you at that time had a draft of the select committee's report?

Mr. DELLUMS. Oh, no, not at all.

Mr. MARSHALL. Excuse me for interrupting. Go ahead.

Mr. DELLUMS. And it was clear to me at the meeting that the Central Intelligence Agency was very, very interested in discussing the question of recommendations, and that was what most of our conversation was all about. There were areas where we had some very fundamental disagreements with respect to recommendations on how to correct the obvious abuses that we had uncovered, some of which they agreed that they had been involved in, some they had some differences of opinion with us on. It was an interesting meeting. Beyond that it had no particular significance in my life, except that it was the first time and the only time that I have ever traveled into that particular never-never land.

Mr. MARSHALL. Did you ever discuss with a member of the Central Intelligence Agency the Agency's objections to classified materials

appearing in any draft of the select committee report, that is you personally discussed it?

Mr. DELLUMS. No.

Mr. MARSHALL. How did you receive the objections that the Central Intelligence Agency or any other executive branch department made?

Mr. DELLUMS. They were prepared for us and placed in our respective work stations before the committee. When we came to the committee we had a list of objections, and we went through that list of objections. I recall, for example, one specific meeting where one of my colleagues on the other side of the aisle, the gentleman from Wisconsin, Mr. Kasten, was given an extraordinary amount of time to go line by line, virtually through every single objection for an inordinate amount of time, in fact an unprecedented amount of time. I have never been on a committee when one person other than the chair exercising the prerogative of the chair and I have never even seen a chairperson assume that much time, but it was in the spirit of cooperation, and it was in the spirit of providing an opportunity for any member of the committee to register their concerns, make their case, have the issue debated, and have the committee act upon it.

We went down that list from A to Z, and other members who had objections were also given a substantial opportunity to do the same. The meeting was conducted, or meetings were conducted, in a very fair atmosphere. It was not an adversary situation. Each member had an opportunity to be the advocate of the Central Intelligence Agency or the advocate of the State Department or whatever, as we went down the line with these objections, and then the committee worked its will and we ultimately ended up with a final document.

Mr. MARSHALL. But as I understood your testimony, there was never an opportunity for a person from the executive branch to meet directly with the select committee and voice his objections.

Mr. DELLUMS. No; I am not saying that, because our rules did—we did establish a vehicle that allowed us to take a position, if the administration had objections to that, they had a certain amount of time, in order to appear before the committee in executive session, to argue their case, and once the issue was heard, the committee then ultimately was able to make its own decision, so we had a provision there, so it wasn't an arbitrary situation. It was not.

In my estimation there was extraordinary amount of time for the intelligence community to have access to the committee, and to offer their objections to whatever action we took. I think I have made the statement.

Mr. MARSHALL. Between the time, the January 19 draft of the select committee was distributed to you, and the time the select committee acted to adopt a final report on January 23, 1976, did you attend any meeting at which representatives of the executive branch were present to voice their objections?

Mr. DELLUMS. Would you repeat the first part of your question?

Mr. MARSHALL. Yes.

Between the draft of January 19, 1976, being distributed to you, and to other members of the committee, and the time the January 23, 1976, report was adopted by the select committee, that being on January 23, 1976, did you ever attend a meeting of the select committee, where members of the executive branch were there, and in person

voiced their objections to certain classified information which they contended was present in the committee report?

Mr. DELLUMS. So your question is very specifically from the time we got the initial report to the time we finalized the draft of the report, were members of the administration or specifically the intelligence community there to voice their personal objections?

Mr. MARSHALL. Yes, sir.

Mr. DELLUMS. Or their objections in person?

Mr. MARSHALL. And to give you some explanation, you indicated there was such a vehicle. I am just wondering if that vehicle was in operation during that particular time frame.

Mr. DELLUMS. I see. As I stated earlier, I know that we had a list of objections where at some point the various agencies of the administration had an opportunity to review the document and register their concerns with staff, which resulted in a list of objections that ultimately came before the committee. I do recall that very specifically.

I do not recall specifically whether or not during those few days, whether the administration was personally before the committee to voice their objections. I cannot give you a definitive answer on that. I just don't recall.

Mr. MARSHALL. Mr. Dellums, Mr. Daniel Schorr has stated in the article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report or a draft of that report on January 25, 1976.

Did you give this report of the select committee or a draft of the select committee report or any portion of the text or the draft to Mr. Schorr or to any other person?

Mr. DELLUMS. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. DELLUMS. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee report or any part thereof?

Mr. DELLUMS. I have no knowledge of that whatsoever.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. DELLUMS. No; I do not.

Mr. MARSHALL. Did you give the report of the select committee or make any part of the report of the select committee or any draft of that report available to anyone outside of the Select Committee on Intelligence? By that I mean the members or the staff of the Select Committee on Intelligence.

Mr. DELLUMS. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. DELLUMS. Yes; I do.

Mr. MARSHALL. Mr. Chairman, at this time I think the committee ought to consider going into executive session.

Mr. DELLUMS. Mr. Chairman, prior to—I was wondering, Mr. Chairman, if you want to go into executive session, I would like to make a very brief statement prior to going into executive session.

Mr. FLYNT. Certainly.

Mr. DELLUMS. You asked me in effect did I give the report to Mr. Schorr, do I know any circumstances around how the report got to Mr. Schorr, do I know anyone who gave the report to Mr. Schorr, et cetera, and I have answered you in the negative. No, I do not.

I would like to make a brief statement. When I went on the committee, the initial committee, along with Michael Harrington, there was a great deal of controversy around who was going to chair the committee and whether there were progressive members of the committee, who may be security risks.

Ultimately the committee was reconstituted. Michael Harrington was left off the committee. There was a great deal of opposition to him. My frank opinion was that the opposition had to do with his politics and his ideological perspective more than anything else.

I also had the feeling that because I am also a progressive member of this committee, that I also was a person that they would have liked very much to leave off the committee, but because they had no particular reason to do it, other than a feeling, I was left on the committee.

Now I just want to make one point very clear. Being black, being from Berkeley, being considered very progressive, it was the height of stupidity for me to be involved in a leaking of any information from this committee, because if there was anyone visible, being 6 feet 4½ inches, gray temples, black from Berkeley and radical, it would have been stupid for me to be involved in leaking this report. I just want to make that point absolutely and firmly clear.

I probably was looked at more than any other person on that committee as a potential security risk, and what I wanted to do was to show those members, with their biases and petty prejudices and discriminations that I was as professional as any member of this committee, that I could work damn hard as a member of the committee, that I could be an example of a capable, competent human being, who might have different ideological views and perspectives, but still could operate within the parameters of professionalism and decorum there should be the caliber and the quality of work conducted by any Member of Congress.

I also believed that from a strategic and tactical point of view, that it did not behoove my personal interests or political interests or my desire to represent my constituents to be involved in leaking the report, my point being very simple. I went on the committee to work hard. I felt that there was extraordinary truth to many of the allegations. We ultimately documented that.

I felt the responsibility of Congress was not only to investigate, come up with a report and recommendations, but for the House of Representatives to move aggressively to control the Federal agencies brought into existence ostensibly in the initial instance to protect and defend the precious civil rights and civil liberties of human beings in this country, and I felt that to leak the report would have been to allow those Members of the House of Representatives to do precisely what we have ultimately done, and that is to move away from the investigation of the serious allegations, to some frivolous investigation, like who leaked the report to Daniel Schorr?

I was disillusioned and disappointed that I spent 9 months of my life working many hours late into the night. The committee spent hundreds of thousands of dollars, and over 300 Members of Congress voted not to even print the report that was the product of our work, and I would daresay, short of putting my life on the line, I would be willing to put anything else on the line that less than 10 percent of 435 Members of Congress have even read the report. I would not even submit the question to this committee, because I don't want to put anybody on the spot, but I would daresay that less than 43 Members have

probably even read the report, which to me is a sad and tragic commentary on our time in 1976 when we ought to be moving expeditiously to correct the abuses and right the wrongs and to challenge the evils that we documented in our report and the Senate documented in theirs.

My answer to you; that is, my way of explaining to you, "No, I did not leak the report to Daniel Schorr," because I went on that committee to get the job done, not to play frivolous games, and it certainly did not move—it certainly would not serve the interest that I went on that committee to try to serve, which I think was legitimate, to have this report prematurely leaked prior to the time that the Congress of the United States faced that issue on behalf of the American people honestly and cleanly, because it allowed us to begin to deal with symptoms and not with the ultimate problem, and the ultimate problem was: Is the Congress of the United States, as a co-equal branch of government, going to be involved in appropriate oversight and going to be involved in correcting the abuses, and adhering to and implementing recommendations so that we end for all time the various allegations that we documented in our report? and I think that you gentlemen are attempting to do your job.

The House of Representatives gave you resources and gave you a mandate to do it.

I voted against it, because I think the issue here is a very delicate and fragile question, and I certainly hope that the constitutional test does not come on the issue of whether or not the press has a right to do whatever they have to do. It is a very delicate and explosive and powerful question.

I hope that these hearings will come rapidly to a conclusion. If you find out, find out. If you don't, say that and let's get on with the much more important set of issues, and that is to review that report and to get on with the recommendations and implementing the recommendations that I think 10 Members of this House gave a great deal of time, sweat, and blood to put together, and I think that the faster we move beyond the symptomatic issues, the side questions, the faster I think this country will be a hell of a lot healthier than it presently is. That is my comment.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Mr. Chairman, pursuant to House Rule XI 2(k) (5), I move that we go into executive session at this time.

Mr. FLYNT. You have heard the motion offered by the gentleman from South Carolina, Mr. Spence. This is a motion which under the rules of the House must be made in public session, with a quorum of the committee present.

The rules of the House also require that the vote be taken by a roll-call vote. The question is on the motion of the gentleman from South Carolina.

The staff director will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

Mr. PRICE. Aye.

Mr. SWANNER. Mr. Quillen.

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

[No response.]

Mr. SWANNER. Mr. Foley.

[No response.]

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

[No response.]

Mr. Chairman, seven members answer aye, no members answer nay. Five members absent and not voting.

Mr. FLYNT. On this rolleall vote in public session with a quorum of the committee being present the ayes are seven, the nays are none. The motion is agreed to. The committee will resolve itself into executive session.

Mr. BENNETT. Mr. Chairman, do you want to ask unanimous consent here for his attorney and his assistant to be present?

I ask unanimous consent that his attorney and his assistant be allowed to be present.

Mr. FLYNT. Is there objection?

The Chair hears none.

Mr. Morgan, you will be permitted to remain, and Mr. Brauer.

The room will be cleared and we will go back into public session at the earliest possible time.

[Whereupon, at 11 a.m., the committee proceeded into executive session.]

[Whereupon, at 12:29 p.m., the committee proceeded into public session.]

Mr. FLYNT. The Chair announces that the committee is in public session, and will stand in recess until 1:30 p.m. this afternoon, at which time the committee will reconvene in this room.

[Whereupon, at 12:30 p.m., the committee was recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

Mr. FLYNT. The committee will come to order.

The committee is in open session.

A quorum is present for the purpose of hearing testimony and receiving evidence. The witness at this time will be our colleague from Louisiana, the Honorable David C. Treen.

Mr. Treen, the committee welcomes you before it, and we would ask that you rise and be sworn.

Mr. FLYNT. You do solemnly swear that the testimony that you will give this committee in matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TREEN. I do.

**TESTIMONY OF HON. DAVID C. TREEN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF LOUISIANA**

Mr. FLYNT. You are Hon. David C. Treen, a Representative from the State of Louisiana?

Mr. TREEN. Yes, sir.

Mr. FLYNT. And were you a member of the House Select Committee on Intelligence?

Mr. TREEN. I was.

Mr. FLYNT. Were you a member of it from the time it was first created as well as from the time that it was reconstituted?

Mr. TREEN. I was appointed on both occasions.

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Mr. Treen, you are appearing here at the invitation of this committee.

Mr. TREEN. Yes.

Mr. MARSHALL. Prior to appearing, you have received copies of House Resolutions 1042 and 1054 as well as copies of the rules of this committee, investigative procedures adopted by this committee, and a copy of the chairman's opening statement; is that correct?

Mr. TREEN. Yes, I have, although I haven't read them.

Mr. MARSHALL. All right, sir.

Should you feel the need to read them or to review them in your testimony, if you will call that to our attention, we will be happy to give you the opportunity to do so.

Mr. TREEN. Thank you. I have no reason to need to read them.

Mr. MARSHALL. Do you have a written statement which you wish to file with the committee?

Mr. TREEN. No, I do not. I am here to answer questions.

Mr. MARSHALL. Do you have an oral statement that you would like to make to the committee?

Mr. TREEN. Well, no. I thought that I would simply answer questions. There are some points I would like to bring out as we go along, and if those are not covered in the questioning, then, Mr. Chairman, I would like to say something at the conclusion.

Mr. FLYNT. You will certainly be accorded that opportunity.

Mr. MARSHALL. Mr. Treen, have you turned over to this committee's staff copies of any documents you may have relating to the Select Committee on Intelligence's work or of the subject matter of this inquiry?

Mr. TREEN. I turned over, at the request of the chairman, the draft of the report of the intelligence committee that was sent to my office on January 19 of this year. I turned over to the committee subsequent revision pages to that draft. Those items were kept for a while, and then returned to me, and I have them in my possession today.

Mr. MARSHALL. Are there any other documents relating to the select committee's work which you have in your possession or which should be brought to the attention of this committee?

Mr. TREEN. I think that the investigators for this committee, I know they were shown the items that I had, and all of the items in which they expressed an interest I gave them ample opportunity in my office to examine these documents.

Mr. MARSHALL. In the event your evidence or testimony may involve any information or data concerning the executive session or any executive session of the Select Committee on Intelligence or classified information, or information which may tend to defame, incriminate or degrade any person, if you would call that to the committee's attention so that they can take time and appropriate action under the Rules of the House of Representatives, please, sir.

Mr. TREEN. I will. I got prepared for this about a week ago, and if you will pardon me just a moment, there are a couple of items I want to get before me.

Mr. MARSHALL. All right.

Mr. TREEN. All right, sir, thank you.

Mr. MARSHALL. Mr. Treen, as a member of the House Select Committee on Intelligence, did the report of any leaks come to the select committee's attention during the course of its deliberations prior to preparing a draft of the final report? By leaks, I mean disclosure of classified information to unauthorized persons.

Mr. TREEN. Well, there were, of course, as the committee well knows, a number of instances where items presumably were published by the news media that had been discussed in committee. It is a little difficult to describe those, because I don't want to suggest that these reports were accurate, but there were a number of instances where the news media claimed to have access to information from our executive sessions.

Mr. MARSHALL. Was any action taken by the select committee to determine the identity of these reported leaks or to further investigate the claims of newsmen that they had access to information in the select committee's possession?

Mr. TREEN. There was no action taken by the committee as a body that I can recall. Whether or not the chairman of the committee took some individual steps or not, I am not certain. I know that the committee declined on at least two occasions to adopt motions to take action, two motions offered by me, one rather early in the life of the committee, following a disclosure by Mr. Daniel Schorr, and I offered a motion to go into executive session and to call Mr. Schorr to testify. My recollection is that it was defeated. My recollection is that the motion was defeated on a voice vote.

Mr. MARSHALL. Do you recall the particular disclosure by Mr. Schorr which prompted your motion?

Mr. TREEN. I don't, and if I did, I would have to, pursuant to your suggestion, suggest that we go into executive session, but it is in the record, of course, the classified part of our record, and I assume that that is available to the committee.

Mr. MARSHALL. Was there any discussion or reasons given by members of the select committee as to why they did not deem it appropriate to investigate leaks or alleged leaks as they were occurring?

Mr. TREEN. Well, there was an expression of horror, as I recall, from several sources at the very idea of calling a newsman and asking him his source, was anathema, was against established principles, et cetera. I responded by saying we don't have to cross that bridge as to what we do if he would decline to answer until afterwards. I said who knows but he might not tell us something, but it went to a vote pretty quickly and was disposed of, I feel certain on a voice vote, and

it was obvious that I was in a distinct minority on the suggestion that we call Mr. Schorr, and that was the end of it at that time.

There was a later specific motion which is in the open record, I believe, which was defeated on an 8 to 4 vote that we appoint a subcommittee for the specific purpose. That motion was made by me on January 20, and supported by four members of the committee and opposed by eight members of the committee on a record vote.

Mr. MARSHALL. Was there any internal investigation undertaken by the select committee or the select committee staff short of calling Mr. Schorr or short of calling anyone as a witness, but simply an inquiry made of the staff or the committee members as to the possible identity of sources?

Mr. TREEN. Not by the committee as a body, Mr. Marshall. Again the chairman of the committee may have made some inquiries which would have been within his authority and prerogative as chairman of the committee. I am informed by one person that he did so make some inquiries at one time. He may have made them extensively. I don't know.

Mr. MARSHALL. Were you advised of the success of those inquiries insofar as being able to identify the source of persons who may have been giving unauthorized information?

Mr. TREEN. No, I was not advised either informally or formally as a member of the committee, that I can recall.

Mr. MARSHALL. Could you give us your evaluation of the overall security of classified documents or classified information during the select committee's work?

Mr. TREEN. Well, if I had to do it in one word, Mr. Marshall, I'd say sloppy. This is based, I should say, on some personal observation, but primarily based upon information given to me by a member of the staff, which rather astonished me.

With respect to the first category, I was disturbed by the fact that when we had material which was classified, there did not appear to be any control, that when Xeroxes were made, as was necessary, of course, to have documents before each member of the committee, there was no indication that the number of copies had been recorded. It may have been, I am not saying because I don't know, but there was no indication that the number of copies had been recorded, no indication that the disposition of the copies specifically, you know, that Copy No. 1 was placed in the hands of Mr. Treen, Copy No. 2 in the hands of Mr. Kasten and what-have-you. I saw no indications of that.

Then in the other category I think you have had Mrs. Hess as a witness before this committee, I am not certain, Mrs. Jackie Hess.

Mr. MARSHALL. Yes, sir, she will be here before the committee. She has not testified as yet.

Mr. TREEN. She has what?

Mr. MARSHALL. She has not testified as yet, but she will be called.

Mr. TREEN. On February 18 of this year she, while in my office, revealed to me what she alleged to be facts about security, which astonished me and disturbed me a great deal. I think you probably have gotten some of this from other members. I have read the press reports of some of the testimony here, but I made a memorandum of the conversation that we had following her visit in my office, and which I have before me.

I would be willing for the committee to have this. It would be understood that this was my recollection of a conversation that took place some time before it was dictated the same day, but that the choice of words, except where in quotations, are my own, and may not be completely accurate, but the sum and substance of it was that the security was very loose, that she made many requests, whether or not the requests were legitimate or not I don't know, but that she made many requests with respect to security procedures which were overridden, that she had written several memorandums, copies of which she said she would be glad to show me, which she said were ignored. Again whether or not they were appropriate requests, I don't know. She said that the man working for her, who was a document control clerk, did a terrible job, and that once when she suggested he be replaced, that she was rebuffed by the director of the staff, Mr. Field.

She said that she went through the document control book and circled many items which were checked out which were not shown as being returned, although—this is not in the memorandum but my recollection is that she said that some of those were returned at a later time.

She said that there was no regard for security, that in the preparing of the final draft, Emily, whom I believe to be Emily—I think there is only one Emily on the staff.

Mr. MARSHALL. Sheketoff.

Mr. TREEN. I would assume that that was the Emily she was referring to, was virtually in charge and that keeping track of the records turned out to be a hopeless job. She said they have no record as to how many copies of the draft report was made. This was on February 18, my conversation with Miss Hess. The draft report was January 19. She said there was no record as to how many copies of the draft report was made, how many copies were delivered to the members' offices, et cetera. She said that joking remarks were made about her as a security officer from time to time, that documents were taken home by members of the staff.

I asked her, "Can you be sure that no copies of those documents were made when the staff took them home," and her answer, of course, was obvious. There was no way that she could assure that copies were not made. She did not accuse any members of making any, of course, and she said that security was breached by members of the staff and members on the committee.

There are a couple of other references that are somewhat personal, which are in the memorandum, but consistent with your admonition, I don't think I would reveal those in open session.

Mr. MARSHALL. Would you be willing to allow this committee to obtain a copy of the memorandum?

Mr. TREEN. Yes.

Mr. MARSHALL. As I understand your testimony concerning the memorandum, the memorandum simply summarizes and reports on a conversation you had with Mrs. Hess. It does not set forth things that you personally saw; is that correct?

Mr. TREEN. That is correct, and it was about a 30-minute conversation, so there was a lot more said than is in that one-page memorandum.

Mr. MARSHALL. Other than what you have already testified to, which I believe you identified as coming primarily from Miss Hess in other

conversations with staff persons, did you personally observe or witness a breach of the security rules and regulations which the Select Committee adopted shortly after it was reconstituted?

Mr. TREEN. No. My recollection is that in the areas in which I make complaint, that is control of documents, really our regulations were not very specific. There were regulations, as the committee is well aware, with regard to looking at the documents in the committee room, and so forth, but I don't believe that we had any regulations with respect to the numbering of documents, manner of filing, control of numbers, seeing that the documents were returned, any sort of indexing documents.

I don't think we had any such regulations, Mr. Marshall, so those are the areas of which I would make complaint, and so I can't say they were violating the regulations because I don't know that we had them. I think they did set up some procedures, we have probably already gotten into that, within the committee as a result of suggestions made by some of the intelligence agencies as to how they should handle their materials, and whether there was internal staff regulation or not, I don't know, but our committee regulations were pretty sketchy, and general.

Mr. MARSHALL. Have you had a discussion with any newsman concerning the source of leaks, either from the Select Committee or any other source of leaks dealing with the Select Committee's works? I am specifically referring to a conversation with a Mr. Jim Adams.

Do you recall that conversation?

Mr. TREEN. Yes, I recall a conversation. Well, I had many conversations with Jim Adams. Some of them were just discussing things that went on in open session. Mr. Adams, I guess like a good newsman, would attempt to get information from me. I did not ever offer him any or give him any. He did tell me one time, I feel certain it was in the speaker's lobby, Mr. Adams told me that his source of some information that he had published, I believe that he had published or that had been published at least, was a member of the committee.

Mr. MARSHALL. Of the Select Committee on Intelligence?

Mr. TREEN. Yes. He did not identify the person.

Mr. MARSHALL. Do you recall when that conversation took place?

Mr. TREEN. I should have recorded it. I didn't. My feeling is that it probably occurred, and my feeling is so vague that I don't think it is too worthy, but I think that it was in the time when we were, as a committee, considering the release of information on several subjects. I think that would identify for the committee. I could probably be a little bit more explicit in a closed session, but I think the committee is aware, and I don't think there is any secret about the fact, that there was an attempt to release information on several subjects prior to our final report, and while we were debating that issue, and while drafts were being drawn for the purposes of moving that certain information be released, pursuant to the procedure we had established with the President incidentally, there were some leaks of information involved in those motions. I think it was at that time, so you would be able to identify from the record as to when that part of our work was taking place.

I didn't pursue him. I don't remember whether I asked him would he care to say who it was. I don't think I even asked him and I don't think he would have told me.

Mr. MARSHALL. Would the dates of December 18, 19, and 20, 1975, refresh your recollection as to the specific time?

Mr. TREEN. Mr. Marshall, let me make a point before we go to that question. I can't be certain, particularly since I didn't make a memorandum of it, as to whether when Mr. Adams said a member of the committee, he meant a Congressman on the committee or committee staff. It was my interpretation of what he said that he meant a member of the committee, but he could have well intended something else. Sometimes when people say a member of the committee, they are thinking about staff, so I don't know, but he did say a member of the committee.

Mr. MARSHALL. All right, sir.

Would the dates December 18, 19, and 20, 1975 refresh your recollection or be consistent with your recollection, if I advise you those were the dates of the matter you referred to about releasing information?

Mr. TREEN. Yes; and that does refresh me, because it was right before our Christmas recess that we were considering taking this action, sending to the President, indeed I think a couple of the motions passed, I think one was defeated about releasing information, and the procedure to send it, or to ask the intelligence agencies for comment before we released. That procedure had been put into effect I believe before our recess, and I think it was around that time, Mr. Marshall.

Mr. MARSHALL. Do you recall receiving the initial draft of the select committee's report on or about January 19, 1976?

Mr. TREEN. Yes, I do.

Mr. MARSHALL. How was that draft delivered to you?

Mr. TREEN. I found it on my desk when I went into my office sometime during the afternoon on the 19th.

Mr. MARSHALL. When you found it on your desk, was it simply in two black volumes or were the volumes sealed or how was it packaged?

Mr. TREEN. It was not sealed. It was two black volumes with a covering letter attached with a paper clip, a letter from Searle Field, the staff director, and I think you have a copy of that letter.

Mr. MARSHALL. Yes, sir.

Did you make any inquiry to determine how the volumes arrived on your desk, who received them, the circumstances of delivery?

Mr. TREEN. Yes; my recollection is that I did. Again I didn't record this, not really knowing that it would be of importance, and being pressed like all of us are, and I don't remember now. I went back later to try to determine which of the people in my office actually had received it, but apparently it was brought, I was informed, but I was not there, so whoever brought it just left it with the individual on my staff, and I think my staff then brought it in and put it on my desk. Possibly a person on my staff opened the door to my office and let the individual come in and put it on the desk. I don't believe that it came in an outer envelope, which would have been removed by any member of my staff.

My recollection is that it did not come that way to a member of my staff, but a member of my staff handled it, either in taking it and putting it on my desk, or in letting the person come into my office and put it on the desk. How long it had been there before I arrived, I don't know.

Mr. MARSHALL. After that, did you receive changes in the January 19 draft?

Mr. TREEN. Yes.

Mr. MARSHALL. And how were they delivered?

Mr. TREEN. As I recall, I think on that same afternoon someone on the staff came by and said "We got a page," I think it was a page, maybe it was one, two, or three, but I think it was "a page that we want to change," and I said, "Go ahead, there it is, and make the change." I didn't closely observe what was being done, but the individual put a page in and apparently took a page out.

The other pages were delivered, as I recall, in the committee room. I have the pages with the envelopes. I kept track of when the page, except for the first day. I hadn't even looked at the report and the staff member wanted to make a change that first day, but subsequent to that I kept the pages. I removed them myself. I didn't permit the staff to take my two black folders and make their changes. I wanted to take pages out and put them in, and except for that first day I did all of the changing in my folders, and I have the pages identified as I removed them.

Mr. MARSHALL. Did you receive another draft dated January 23, 1976, or was your draft of January 19 changed concurrently, so that it became a draft of January 23, 1976?

Mr. TREEN. Let me try to refresh myself.

Mr. MARSHALL. I may be able to simplify the inquiry somewhat. What I am trying to determine, Mr. Treen, is whether there was another complete two-volume document sent to you with the date of January 23, 1976, or whether simply changes were made in the January 19 draft, which then brought your draft up current.

Mr. TREEN. I don't recall having another complete draft ever given to me, certainly no new binder, such as the original binders.

Mr. MARSHALL. Mr. Treen, Mr. Daniel Schorr has stated in an article in the Rolling Stone dated April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give this report or a draft of any part of the report or the text from either the report or a draft to Mr. Schorr or any other person?

Mr. TREEN. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. TREEN. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or a draft of the report or a portion of the text of the draft of the report?

Mr. TREEN. No, I have no knowledge other than what I read in the newspaper myself.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. TREEN. No.

Mr. MARSHALL. Did you give the select committee's report or any part of the report or part of the draft and make it available to anyone outside of the Select Committee on Intelligence, that is either committee member or staff member?

Mr. TREEN. No, and the report remained in my possession at all times except toward the end of the committee I delivered it in the

envelopes you see here to the staff, got a receipt for it, and then since the items were returned to me subsequently they have been in my possession at all times.

Mr. MARSHALL. Who signed that receipt, sir?

Mr. TREEN. Jacqueline Hess, on January 30, 1976.

Mr. MARSHALL. Do you know of anyone who made the report or any portion of the report or draft of the report available to anyone outside the Select Committee on Intelligence?

Mr. TREEN. No.

Mr. MARSHALL. No further questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. I don't have any questions except to thank Mr. Treen for coming before the committee and helping us in our investigation.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Mr. Chairman, I have no comments except to say that I am sorry I missed your testimony. I am glad I got here before you concluded.

Mr. TREEN. Thank you, Mr. Quillen. I don't think I revealed anything.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Treen, the committee thanks you for your appearance, for your continuing cooperation with the committee and its staff and for the contributions which you have made to the committee.

Mr. TREEN. Mr. Chairman, thank you.

There is one thing I would like to add with respect to the conversation with Miss Hess. I solicited information from her, and she, on a previous occasion, I had gotten hints through just casual conversation with her that she was disgusted, and so when she came to my office on the 18th of February, and I have forgotten the reason for her coming, I then took that opportunity to question her in depth. I wanted to say that she didn't ask to see me to pour this forth. I elicited this from her, although when I asked her she responded openly and freely, as I think a good staff member should have, to a member of the committee.

Let me see, Mr. Chairman, if there is anything, since I didn't have a statement, that I would want to add. I have something to add and something to correct.

I indicated that on 20 January 1976 I made a motion for the select committee to investigate itself. That was on 28 January 1976 and appears on page 2132 of the record on that date. My previous motion, as I recall, would have been earlier on in the fall of the previous year.

On 18 February 1976 I made one final attempt to get an investigation by the committee. If the committee is interested, I would be pleased to furnish a copy of my letter of February 18, 1976, addressed to Chairman Pike, together with a copy of the resolution, which I wanted to offer.

The purpose of the letter was to ask for a meeting of the committee. We had not gone out of existence, although our report was supposed to be filed prior to that time. We were still in existence legally until April 30, and I wanted to offer a motion that the committee conduct an investigation and inquiry into the circumstances surrounding and

pertaining to: (1) The obtaining by unauthorized persons of portions or entire copies of the draft report or reports and/or the final report of the committee and, (2) other alleged unauthorized disclosures of documents, materials and information in the possession of or produced by the committee. It is the intent of the resolution that the investigation be conducted by the committee as a whole, and that it cover all possible means by which the events described above may have occurred.

If the committee is interested, I will be pleased—there is nothing secret about the letter in any way—

Mr. FLYNT. If you will make it available to the committee, it will be received.

Mr. TREEN. I have copies here, now. I did not get a written response to that request. I am not suggesting that I should have, although I hoped we had, but I got a verbal response from the chairman that he would not call a committee meeting, and under our rules the only way to get a meeting of the committee, other than to have the chairman call it, was to have a majority call a meeting, and we didn't have a majority for that purpose.

I subscribe generally to the views expressed by others here that we had an arrangement with the President which was clear, unequivocal, and that agreement had to apply to our final report as well as any information in between. Any other construction of that agreement would be totally ridiculous. To suggest that material would be furnished to us that could not be disclosed up until January 31, but that it could be disclosed after that, is manifestly ridiculous, and apparently the House agreed with that.

I have in the recommendations of the House Select Committee, which of course is an open document, set forth my views for any of those who are interested in what we might do in the future with respect to security.

Mr. FLYNT. Any further questions?

Mr. Treen, the committee does not anticipate that it will recall you, but if it does—

Mr. TREEN. I will be around, Mr. Chairman, I hope.

Mr. FLYNT. We will give you plenty of notice, and we will arrive at a time mutually convenient.

Mr. TREEN. Thank you, Mr. Chairman.

Mr. FLYNT. With the thanks of the committee, you may step down.

Mr. Roger Carroll.

Mr. Carroll, will you raise your right hand?

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matters now under investigation will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CARROLL. I do.

**TESTIMONY OF ROGER CARROLL, GENERAL ACCOUNTING OFFICE,
FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE**

Mr. FLYNT. You may be seated.

Mr. MARSHALL. Will you state your name for the record, please, sir?

Mr. CARROLL. My name is Roger Carroll. I live in Arlington, Va.

Mr. MARSHALL. Mr. Carroll, where are you presently employed?

Mr. CARROLL. GAO.

Mr. MARSHALL. And how long have you been employed there?

Mr. CARROLL. I started in June 1964.

Mr. MARSHALL. Did you serve on the staff of the Select Committee on Intelligence?

Mr. CARROLL. Yes, sir.

Mr. MARSHALL. When did you come to the staff of the House Select Committee on Intelligence?

Mr. CARROLL. I believe it was July 29, 1975, and I went back to GAO on March 22, 1976, I believe.

Mr. MARSHALL. Were you detailed from GAO to the select committee?

Mr. CARROLL. Yes, sir.

Mr. MARSHALL. What was the purpose of that detail?

Mr. CARROLL. I was to estimate intelligence costs in the budget, also price out the cost of certain covert operations, and to compute the percentage of markup on certain electronic equipment.

Mr. MARSHALL. To whom did you report on the select committee or the staff?

Mr. CARROLL. Mr. Boos, Mr. Field, and Mr. Donner.

Mr. MARSHALL. Did you at any time while you were on the select committee staff have any additional duties besides those that you have referred to?

Mr. CARROLL. I am not quite clear on your question. Could you give me an example?

Mr. MARSHALL. Well, for example, were you involved in the distribution of the January 19, 1976, draft of the select committee and its report?

Mr. CARROLL. Yes, sir.

Mr. MARSHALL. Did you have any duties in connection with preparing that report other than the analyses that you have already testified to?

Mr. CARROLL. Not directly. Numbers that I prepared found their way into the report as it was written, but I can't identify three pages and say I wrote those pages.

Mr. MARSHALL. Do you have a security clearance?

Mr. CARROLL. Yes, sir, top secret, and also an atomic energy clearance, a so-called Q clearance.

Mr. MARSHALL. Would you tell us your duties with regard to distribution of the January 19, 1976 draft, of the select committee's report?

Mr. CARROLL. As I recall, one of the female members of the staff asked that I help in the delivery process, and that I deliver four copies to four members, and that in the event members were not there, to give them to their administrative aide or legislative aide, whichever the case might be.

Mr. MARSHALL. Who were the four members that you were instructed to deliver copies to?

Mr. CARROLL. I was unable to answer that question for Mr. Kelly your investigator. Since that time I have thought about it, and under oath I am very reluctant to say who those members were. I don't

really know. I do know definitely that two were located in Cannon Office Building and two were located in the Longworth Office Building.

Mr. MARSHALL. Were you required to obtain any signatures for the drafts that you delivered?

Mr. CARROLL. No.

Mr. MARSHALL. Were the drafts numbered in any way?

Mr. CARROLL. No; I wouldn't know that, because I didn't look at the drafts.

Mr. MARSHALL. Were you given any other instructions concerning delivery other than what you have testified to?

Mr. CARROLL. I may have been, but if I was, I don't recall them. I do recall that when I got to the first Congressman's office, there was a telephone message there for me to call back to our committee office. I called back, and whoever answered the phone, and again it was I think a female member of the staff, said "Proceed with the delivery and disregard that first telephone message," so I proceeded with the delivery. Subsequently I found out, I think, that the call concerned someone back at the staff wanting to make a change in the report, and they knew which offices I was going to, and they had called ahead.

Mr. MARSHALL. Did you allow anyone to make any copies of that draft?

Mr. CARROLL. No, sir.

Mr. MARSHALL. While it was in your possession?

Mr. CARROLL. No, sir.

Mr. MARSHALL. Were you involved in any delivery of changes in the draft?

Mr. CARROLL. Not that I recall.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in the Rolling Stone dated April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give this report or a draft of the report or any portion of the text of the report or a draft to Mr. Schorr or to any other person?

Mr. CARROLL. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. CARROLL. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or any portion of the report or any part of the draft or text of the draft?

Mr. CARROLL. No; I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. CARROLL. No; I do not.

Mr. MARSHALL. Did you give the select committee's report or make any part of the report or the text of the draft of the report available to anyone outside of the Select Committee on Intelligence?

Mr. CARROLL. No; I did not.

Mr. MARSHALL. Do you know anyone who did?

Mr. CARROLL. No, sir.

Mr. MARSHALL. No further questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Mr. Carroll, you said you have secret and top secret clearance I think for a number of years, and you worked with the committee staff and the committee through this investigation.

Do you think there was anything in the report which would be of a classified nature?

Mr. CARROLL. That would call for a judgment answer on my behalf, and I am not one of the President's authorized men to classify information obviously. Also, I think it relates to Mr. Rogovin's testimony yesterday on the timing, that something, some bit of intelligence early, would give our adversaries some sense of what our intelligence gathering capability is if we got it real quick. I don't know how to answer your question other than that.

Mr. SPENCE. I think that is good enough.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. BENNETT. I might ask him something.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. Since you do have this high clearance, you were in a position to have told those who didn't know in the committee and its staff that subtracting material from classified documents, particularly secret and top secret documents, and putting the substance of that in a report, would require that report to be classified. You knew that law, didn't you?

Mr. CARROLL. The best way I can respond to you, Mr. Bennett, and I am not trying to avoid the question, it is a matter of judgment. If you were looking at the liquor bill for the CIA, to take for example, at a particular location, and it was marked top secret, and it was clearly excessive, it would kind of indicate to me that it was labeled top secret in an effort to suppress the information, to limit its circulation, rather than to classify a national secret.

Mr. BENNETT. That could have given you a reason to think something so obviously not properly classified should not have been given an improper classification, but it would not give you the right legally to classify it, would it?

Mr. CARROLL. I didn't declassify anything, and the best way I can respond to your question is that.

Mr. BENNETT. The real reason I was asking the question is, so far you are the only person who has come before us that I remember, who has had as high a classification secrecy knowledge as you. I am just curious why you didn't tell somebody on the staff, like the director of the staff or point out to the members of the committee that they were violating, that they would be violating the law, if in fact they took information from secret and top secret documents and published it in a congressional report that was not classified. I just wonder why you didn't tell them.

Mr. CARROLL. If I could rearrange the picture somewhat, my job was more to do what I was told rather than trying to tell someone else what they should be doing.

Mr. BENNETT. Are you telling me you felt the burden of the bureaucracy in the committee was such together with the fact that it was composed of senior and able Members of Congress that you felt that it was not beholden for a person in the particular location that you had on the staff to be bringing that to their attention?

Mr. CARROLL. No, sir. Clearly if something would have appeared wrong in my mind, I would have spoken out.

Mr. BENNETT. I understand that, and I believe you to be saying the truth when you say that. However, and I don't know the specific contents, it has been testified that some of the material in the final report, which was published in the Village Voice, is secret and top secret, not just because it came from secret and top secret documents, which in itself should make it secret and top secret, but it is in fact top secret today, except the fact that now it has been exposed, it is probably no longer useful to classify it, but it was not such material, therefore, that stimulated you to think that it might be classified.

Is that it?

Mr. CARROLL. No. My only response to that, sir, is that out of a committee of 13, 9 I believe reasonable men, and there were no women members, voted, and they agreed that report should be their product.

Mr. BENNETT. Then I think, really, the answer would be yes, probably to the question I asked before, that you felt a person in your capacity shouldn't be advising such senior Members of Congress upon secrecy rules, which apparently they didn't know. Apparently they didn't know that they didn't have a right to take material from secret and top secret documents and publish it in a report, and declassify it themselves. They didn't have the authority to do it. There is no statute that allows that.

Mr. CARROLL. I am not an attorney and I don't know what the statutes allow for congressional committees to declassify information.

Mr. BENNETT. I think you have clarified your position. Thank you.

Mr. FLYNT. Are there further questions?

If not, Mr. Carroll, you may step down with the thanks of the committee. We do not anticipate that we will recall you, but if we do, we will try to be a little bit more prompt in reaching you on the witness schedule than we did today.

Mr. CARROLL. Thank you very much, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Carroll, for your presence and for your cooperation with the committee staff and with the committee.

Mr. CARROLL. Thank you, sir.

Mr. FLYNT. Ms. Susan Parker.

Ms. Parker, would you remain standing and be sworn, please.

Mr. FLYNT. You do solemnly swear that the testimony that you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth so help you God?

Ms. PARKER. I do.

TESTIMONY OF SUSAN PARKER, ASSISTANT TO THE EDITOR, NEW YORK MAGAZINE, ACCOMPANIED BY STUART LAW, COUNSEL

Mr. FLYNT. You may be seated.

You are Ms. Susan Parker?

Ms. PARKER. Yes.

Mr. LAW. Mr. Chairman, I am appearing as counsel.

Mr. FLYNT. We welcome both of you before the committee, one in the capacity of witness and one in the capacity of counsel.

Mr. Marshall?

Mr. MARSHALL. Ms. Parker, would you state your full name for the record, please?

Ms. PARKER. Susan Parker Brant.

Mr. MARSHALL. Where do you live?

Ms. PARKER. 401 East 89th Street, New York.

Mr. MARSHALL. Do you prefer to be called Ms. Parker or Ms. Brant?

Ms. PARKER. Yes, Parker.

Mr. MARSHALL. Is that where you presently live?

Ms. PARKER. Yes.

Mr. MARSHALL. And you are appearing before this committee under subpoena?

Ms. PARKER. Yes, I am.

Mr. MARSHALL. Prior to the hearing, you have received a copy of House Resolutions 1042 and 1054, have you not?

Ms. PARKER. Yes, I have.

Mr. MARSHALL. As well as a copy of the rules of this committee?

Ms. PARKER. That is right.

Mr. MARSHALL. And the investigative procedures adopted by this committee and copy of Mr. Flynt's opening statement; is that right?

Ms. PARKER. Yes.

Mr. MARSHALL. Should you have need to consult with those, if you will advise us or have your counsel advise us, we will give you ample opportunity to do so.

Ms. PARKER. Thank you.

Mr. MARSHALL. Do you have a written statement which you wish to make to the committee at this present time?

Ms. PARKER. No, I do not.

Mr. MARSHALL. Is there an oral statement you would like to make to the committee at this time?

Ms. PARKER. No, sir.

Mr. MARSHALL. Ms. Parker, in the event that your evidence or testimony may involve information which is classified, if you know it to be classified, or evidence which may tend to defame, degrade, or incriminate any person, would you please advise this committee in an appropriate and timely fashion so that the committee can take action under the Rules of the House of Representatives? I might add that those rules provide that in the event classified information or information which would tend to defame, degrade, or incriminate any person may be elicited from the witness, the committee must then determine whether it wishes to go into executive session, rather than have that information revealed at a public session.

Is that understood, counsel?

Mr. LAW. Yes.

Mr. MARSHALL. Would you indicate for the record?

Mr. LAW. Yes.

Mr. MARSHALL. If you will just let us know, then we will take appropriate action.

Ms. Parker, where are you presently employed?

Ms. PARKER. New York Magazine.

Mr. MARSHALL. And who is your immediate superior?

Mr. PARKER. Mr. Clay Felker.

Mr. MARSHALL. Would you identify Mr. Felker's position?

Ms. PARKER. He is the editor of the magazine, New York Magazine.

Mr. MARSHALL. How long have you been employed in that capacity?

Ms. PARKER. As his assistant for approximately 12, 13 months.

Mr. MARSHALL. Would you give us just, very briefly, your duties as his assistant?

Ms. PARKER. It is difficult to do. I pretty much follow up on anything that he asks me to do. I follow up on expense accounts. I follow up on assignments made to writers. I deal with our lawyers, both libel and corporate. I have to deal with office accounts.

Mr. MARSHALL. Now, is counsel appearing for you as your personal counsel, or counsel for Mr. Felker or the New York Magazine or some legal entity in connection with the publication, if I may address that to counsel or to you?

Mr. LAW. Yes.

I am appearing, Mr. Marshall, as her personal counsel.

Mr. MARSHALL. All right, sir.

Ms. PARKER, were you employed in the capacity that you have outlined with Mr. Felker in New York Magazine on or about February 6, 1976?

Ms. PARKER. Yes, I was.

Mr. MARSHALL. On that date were you instructed by Mr. Felker to come from New York to Washington, D.C.?

Ms. PARKER. I was not instructed by Mr. Felker. I was instructed by the managing editor of the Village Voice, Judith Daniel.

Mr. MARSHALL. And is the date correct, February 6?

Ms. PARKER. The date is correct.

Mr. MARSHALL. Would you tell us, please, what your instructions were?

Ms. PARKER. I was called at home that morning and asked if I was available to fly to Washington. I said yes. And I was told that I was to pick up a report in Washington and to fly back to New York.

Mr. MARSHALL. Was the report identified for you in any way?

Ms. PARKER. Yes, it was.

Mr. MARSHALL. Would you tell us what identification was made.

Ms. PARKER. I was told I was to pick up the House report on the CIA activities.

Mr. MARSHALL. Were any other instructions given to you?

Ms. PARKER. I was given an address and I was told a phrase to use when I picked up the report.

Mr. MARSHALL. What was the phrase you were to use?

Ms. PARKER. I've come for the package for New York.

Mr. MARSHALL. Were you instructed to contact a particular person at that address?

Ms. PARKER. No, I was not.

Mr. MARSHALL. What was the address you were given?

Ms. PARKER. When I was first contacted by the investigator I did not remember the address.

Mr. MARSHALL. When you say investigator, you mean an investigator from this committee staff?

Ms. PARKER. Yes: Mr. McDaniel.

This morning, at the suggestion of the committee, I came down early to Washington, and I was able to locate the house that I went to. I was familiar with generally—I knew the area generally and was able to locate the house.

Mr. MARSHALL. And do you know the address of the house that you visited on February 6, 1976, to pick up the report that you described?

Ms. PARKER. Yes. It was 3113 Woodley.

Mr. MARSHALL. I am sorry I still can't—

Ms. PARKER. 3113 Woodley.

Mr. MARSHALL. In Washington?

Ms. PARKER. In Washington.

Mr. MARSHALL. Northwest Washington?

Ms. PARKER. Yes.

Mr. MARSHALL. Do you know who lives at that place?

Ms. PARKER. No, I do not.

Mr. MARSHALL. Did you, in fact, come to Washington on February 6, 1976, and go to that address?

Ms. PARKER. Yes, I did.

Mr. MARSHALL. Did you take a cab?

Ms. PARKER. Yes.

Mr. MARSHALL. Was anyone with you?

Ms. PARKER. No; I was alone.

Mr. MARSHALL. Now, when you arrived at the address, would you tell us what happened please, ma'am?

Ms. PARKER. I went to the door. A maid answered. I told her I had come for a package for New York. She handed it to me and I left.

Mr. MARSHALL. Do you know the name of the maid?

Ms. PARKER. No, I don't.

Mr. MARSHALL. How was the report packaged when it was given to you by the maid?

Ms. PARKER. It was in a manila envelope and in a plastic bag, plastic wrapping.

Mr. MARSHALL. Was the envelope sealed?

Ms. PARKER. No, it was not.

Mr. MARSHALL. Was the plastic wrapping sealed?

Ms. PARKER. Yes.

Mr. MARSHALL. Was there anything else given to you besides the package and the report that you have described?

Ms. PARKER. No.

Mr. MARSHALL. Did the maid say anything to you?

Ms. PARKER. No, she did not.

Mr. MARSHALL. Did she identify to you who lived at the address?

Ms. PARKER. No.

Mr. MARSHALL. Did you have any contact with any other person there at the address?

Ms. PARKER. No, sir.

Mr. MARSHALL. After receiving the package that you described, what did you do?

Ms. PARKER. The taxi waited for me and I went back to the airport and took the next available shuttle to New York.

Mr. MARSHALL. Could you see the report through the plastic bag that you described?

Ms. PARKER. I opened the plastic bag and looked inside to see if it was indeed the report. It was.

Mr. MARSHALL. Did the report have a title to it or anything on the front page?

Ms. PARKER. Yes; but I don't remember the exact wording.

Mr. MARSHALL. Did you read anything in the report other than the first page?

Ms. PARKER. No, sir.

Mr. MARSHALL. You did not look through it at all?

Ms. PARKER. I opened it just to see if it was the report and did not read any of the material.

Mr. MARSHALL. Did you determine the number of pages in the report?

Ms. PARKER. No. No, sir. It was maybe 2 inches thick, it seemed, looseleaf pages.

Mr. MARSHALL. Was the report in a binder of any kind?

Ms. PARKER. No, sir.

Mr. MARSHALL. They were just loose pages?

Ms. PARKER. Loose pages.

Mr. MARSHALL. Do you have any rough estimate as to how many pages were there?

Ms. PARKER. I would say several hundred, but I'm not sure.

Mr. MARSHALL. Were these original typed pages?

Ms. PARKER. No, sir.

Mr. MARSHALL. What was the method of—

Ms. PARKER. I believe it was a Xerox. It seemed to be. It was not an original. It seemed to be a Xerox.

Mr. MARSHALL. Was there anything in the package other than Xeroxed pages that you described?

Ms. PARKER. I only opened the manila envelope and looked at the first couple of pages. I didn't look through the entire package.

Mr. MARSHALL. Were there any notations or writings that were not typewriting on the report?

Ms. PARKER. Not that I saw, no.

Mr. MARSHALL. You saw no personal note on the margin or personal writing?

Ms. PARKER. No.

Mr. MARSHALL. Did you have to give a receipt to the maid for the report?

Ms. PARKER. No, sir.

Mr. MARSHALL. I believe you testified that you got back in the cab and then returned to the airport.

Ms. PARKER. Yes, sir.

Mr. MARSHALL. And from there you returned to New York?

Ms. PARKER. That's right.

Mr. MARSHALL. Did you meet anyone on your trip to Washington other than the cab driver and the maid that you testified to?

Ms. PARKER. No, sir.

Mr. MARSHALL. On your return after picking up the package did you meet anyone in the airport?

Ms. PARKER. No, sir.

Mr. MARSHALL. Did you keep the package that you picked up in your custody at all times?

Ms. PARKER. Yes, sir.

Mr. MARSHALL. Let me show you a photograph of a home which I am going to ask the court reporter to mark as an exhibit to this witness' testimony, two photographs.

[The two photographs referred to were marked exhibit 1 for identification, and appear at the end of Ms. Parker's oral testimony.]

[The pictures were handed to the witness.]

Mr. MARSHALL. Have you examined those two pictures?

Ms. PARKER. Yes, sir.

Mr. MARSHALL. Could you tell us if those, in fact, are pictures of the home or the house where you picked up the package you described?

Ms. PARKER. Yes, they are pictures of the home.

Mr. MARSHALL. Would you again repeat the address of the house where you picked up the package?

Ms. PARKER. 3113 Woodley.

Mr. MARSHALL. That is in Northwest, Washington, D.C.

Ms. PARKER. I am not familiar with Washington but it's near the Cathedral.

Mr. MARSHALL. And that is the address of the home shown in the pictures?

Ms. PARKER. I would assume so. I saw the home this morning.

Mr. MARSHALL. Had you ever been to that house before?

Ms. PARKER. No, sir.

Mr. MARSHALL. When you returned to New York to whom did you surrender the package that you picked up?

Ms. PARKER. Mr. Felker.

Mr. MARSHALL. Personally?

Ms. PARKER. Yes.

Mr. MARSHALL. Did Mr. Felker make any statement to you when you gave him the package?

Ms. PARKER. Not that I recall. He may have said, "Did you have any problem." I believe he said something to that effect, and I said no.

Mr. MARSHALL. Any other conversation that transpired between you and Mr. Felker concerning the particular package that you picked up?

Ms. PARKER. No, sir.

Mr. MARSHALL. Did you have any other contact with Mr. Felker that day or conversation with him?

Ms. PARKER. About the report?

Mr. MARSHALL. Yes, ma'am.

Ms. PARKER. Not that I recall, no.

Mr. MARSHALL. In your other conversations were they conversations dealing with your other duties as his assistant?

Ms. PARKER. That's correct, yes.

Mr. MARSHALL. Have you ever had a conversation with Mr. Felker concerning Mr. Daniel Schorr?

Ms. PARKER. No, sir, I have not.

Mr. MARSHALL. Has Mr. Felker ever identified to you or made any statement to you concerning Mr. Schorr as being the person who lived at the home where you picked up the package?

Ms. PARKER. Yes, sir.

Mr. MARSHALL. Would you tell us that conversation?

Ms. PARKER. Yesterday afternoon we were discussing in the office the fact that I was coming to Washington today and in the presence of several other members of the magazine he said I was appearing and was asked why—because I had picked up the package from Mr. Schorr's house.

Mr. MARSHALL. That is what he said?

Ms. PARKER. That's what he said.

Mr. MARSHALL. Have you had any conversation with Mr. Felker at all explaining how the report got at the home where you picked it up in Washington?

Ms. PARKER. No, sir, I haven't.

Mr. MARSHALL. He did not mention that subject to you?

Ms. PARKER. No, he hasn't.

Mr. MARSHALL. Have you had any conversation or contact with Daniel Schorr?

Ms. PARKER. No, sir; I have not.

Mr. MARSHALL. Do you know Mr. Schorr.

Ms. PARKER. I know of him.

Mr. MARSHALL. Have you ever met him?

Ms. PARKER. No, sir.

Mr. MARSHALL. Never had any telephone conversation with him?

Ms. PARKER. He may have called Mr. Felker subsequent to my visit to New York, or to Washington, in which case I may have answered the phone. I think I spoke to him once on the phone but that was after that time.

Mr. MARSHALL. But other than that?

Ms. PARKER. No contact.

Mr. MARSHALL. You never had any discussion or contact or communication with Mr. Schorr of any kind concerning where he obtained the report that you picked up?

Ms. PARKER. No, sir.

Mr. MARSHALL. Do you know when that phone call took place?

Ms. PARKER. No, sir, I don't.

Mr. MARSHALL. Ms. Parker, do you know where Mr. Schorr obtained the document which you picked up in Washington, D.C., as you have described today?

Ms. PARKER. No, sir.

Mr. MARSHALL. Do you have any information whatsoever on that subject?

Ms. PARKER. No, sir.

Mr. MARSHALL. Do you know of anyone who has any such knowledge?

Ms. PARKER. No, I do not.

Mr. MARSHALL. Have you seen any writing at the Village Voice or any other place pertaining to the source of where Mr. Schorr obtained that document?

Ms. PARKER. No, sir.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. I don't have any questions.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Mr. Chairman, thank you.

Have you testified what time you left New York?

Ms. PARKER. No, sir.

I think it was—I think I caught the 11 o'clock shuttle from New York.

Mr. QUILLEN. Do you remember which one you caught returning to New York?

Ms. PARKER. I believe it was the 2 o'clock shuttle.

Mr. QUILLEN. That is all, Mr. Chairman.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Marshall.

Mr. MARSHALL. Ms. Parker, did you ever see the report that you testified you picked up in Washington after you turned it over to Mr. Felker?

Ms. PARKER. No, sir.

Mr. MARSHALL. Do you know whether any copies were made of that report?

Ms. PARKER. I think copies were made, yes.

Mr. MARSHALL. What is the basis for your belief that copies were made?

Ms. PARKER. I think copies were made for the editors involved in preparing it for the paper.

Mr. MARSHALL. Did you actually see the copies being made?

Ms. PARKER. No, I did not.

Mr. MARSHALL. When you say you think copies were made, what is the basis for your believing that?

Ms. PARKER. Well, it is a very small office and to the best of my knowledge I recollect discussing the fact with an assistant to one of the editors who made the copy but I am not sure—

Mr. MARSHALL. Do you recall the name of that person?

Ms. PARKER. It would have been Sandra Morehouse.

Mr. MARSHALL. Will you spell that for the reporter?

Ms. PARKER. S-a-n-d-r-a M-o-r-e-h-o-u-s-e. I can't be absolutely sure that it was that person.

Mr. MARSHALL. Is there any other basis for your belief that copies were made of the document you picked up?

Ms. PARKER. No, sir.

Mr. MARSHALL. To your knowledge was the report that you picked up ever returned to Mr. Schorr, or to anyone acting on his behalf, or to his attorney, or to anyone else?

Ms. PARKER. I believe a copy was returned to his attorney.

Mr. MARSHALL. Do you know who that was?

Ms. PARKER. I think Mr. Latham returned his copy, Mr. Aaron Latham, returned his copy to Mr. Califano.

Mr. MARSHALL. Do you know Mr. Califano as being Mr. Schorr's attorney?

Ms. PARKER. Yes, I do.

Mr. MARSHALL. Have you had any discussions with Mr. Califano?

Ms. PARKER. No, sir.

Mr. MARSHALL. Have you had any discussions with Mr. Latham about this particular matter?

Ms. PARKER. Yes.

Mr. MARSHALL. Would you tell us those discussions, please.

Ms. PARKER. After my trip to Washington, I, one evening, had dinner with Mr. Latham and I described my trip to Washington to him and he was familiar with the report. He wrote the introduction to the report as it was published in the Village Voice.

Mr. MARSHALL. Have you had any conversation with any other person concerning the select committee's report other than what you testified to, and, of course, your attorney, I know you have talked with him, but anyone else besides that?

Ms. PARKER. No, sir.

Mr. MARSHALL. Do you know a Mr. Zalaznick who works on the Village Voice?

Ms. PARKER. Mr. Zalaznick, yes.

Mr. MARSHALL. What is his job?

Ms. PARKER. He is an executive editor of the magazine, one of our editorial directors.

Mr. MARSHALL. Do you work with him as a portion and part of your job?

Ms. PARKER. No, sir.

Mr. MARSHALL. Have you had any conversations with him concerning the select committee's report or any copies made from that report?

Ms. PARKER. I informed him that I had been contacted by Mr. McDaniel and indicated the basis of the conversation I had with Mr. McDaniel.

Mr. MARSHALL. Mr. McDaniel of this committee staff?

Ms. PARKER. Yes.

Mr. MARSHALL. Did Mr. Zalaznick make any statement to you concerning the report or copies that were made of the report or destruction of copies?

Ms. PARKER. No, sir.

Mr. MARSHALL. I believe your testimony was you have not seen a copy of the report or the document you turned over to Mr. Felker after giving it to him; is that right?

Ms. PARKER. That is correct.

Mr. MARSHALL. Have you had occasion to see any copies of that report or portions of copies of the report in the Village Voice?

Ms. PARKER. Have I seen copies of the report in the office?

Mr. MARSHALL. Yes, ma'am.

Ms. PARKER. No, I have not.

Mr. MARSHALL. Or in any other place?

Ms. PARKER. No, sir.

Mr. MARSHALL. Do you know whether any copies of the report are still in existence or not?

Ms. PARKER. Not to my knowledge, no.

Mr. MARSHALL. With regard to the phone call you suggested, or you recall that you may have taken from Mr. Schorr, was that before or after the trip you made to Washington, D.C. on February 6, 1976?

Ms. PARKER. It was after the trip.

Mr. MARSHALL. Was this after the publication in the Village Voice or before?

Ms. PARKER. After the publication.

Mr. MARSHALL. After the February 23 publication?

Ms. PARKER. Yes, some time after that.

Mr. MARSHALL. Did you have any conversation with Mr. Schorr during that telephone call?

Ms. PARKER. No, sir, I did not.

Mr. MARSHALL. Whom did he ask for?

Ms. PARKER. Mr. Felker.

Mr. MARSHALL. And you simply put him with Mr. Felker?

Ms. PARKER. Yes, sir.

Mr. MARSHALL. You did not listen to the conversation between Mr. Schorr and Mr. Felker?

Ms. PARKER. No, sir.

Mr. MARSHALL. You have had no further contact with Mr. Schorr?

Ms. PARKER. That is correct.

Mr. MARSHALL. And just to be absolutely clear on this point, have you ever had any conversation with Mr. Califano?

Ms. PARKER. No, sir.

Mr. MARSHALL. Any communication of any kind with Mr. Califano?

Ms. PARKER. I believe that Mr. Califano called Mr. Felker but I don't remember the time. It was after my trip to Washington.

Mr. MARSHALL. Did you witness or overhear that conversation?

Ms. PARKER. No, sir, I did not.

Mr. FLYNT. Any further questions?

Mr. BENNETT. No questions.

Mr. QUILLEN. Mr. Chairman.

Mr. FLYNT. Mr. Quillen.

Mr. QUILLEN. One thought.

In your work as secretary and as an assistant, do you have knowledge of payments for material used in the publication?

Ms. PARKER. Yes, I do.

Mr. QUILLEN. What was paid for the use of the report of the Village Voice?

Ms. PARKER. There was no payment involved.

Mr. QUILLEN. That is all, Mr. Chairman.

Mr. FLYNT. Are there further questions?

Ms. Parker and Mr. Law, you are released from Ms. Parker's subpoena and we would like to express the thanks of the committee not only for your willing response to the subpoena, but for your cooperation with the committee and the committee staff.

With the thanks of the committee you are released from your subpoena.

Ms. PARKER. Thank you.

Mr. FLYNT. Thank you, Mr. Counsel, for appearing with the witness.

Mr. LAW. I will return these exhibits.

Mr. MARSHALL. Yes, if you will give those to the reporter.

[The exhibit previously referred to follows:]

EXHIBIT NO 1 . to



SUSAN PARKER testimony



3113 Woodley—Exhibit No. 1 to Susan Parker testimony

Mr. FLYNT. The bells and lights indicate that a live quorum call is in progress on the floor of the House of Representatives. Accordingly, the committee will suspend and will reconvene in this room at 3:30 p.m.

[Brief recess.]

Mr. FLYNT. The committee will come to order.

A quorum is present.

Our next witness is Ms. Emily Sheketoff.

Ms. Sheketoff, will you please stand and I will administer the oath.

You do solemnly swear that the testimony you will give before this committee in matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SHEKETOFF. I do.

**TESTIMONY OF EMILY SHEKETOFF, FORMER INVESTIGATOR,
SELECT COMMITTEE ON INTELLIGENCE**

Mr. FLYNT. Ms. Sheketoff, we thank you for your appearance before the committee. I believe you appeared voluntarily.

Ms. SHEKETOFF. That is correct.

Mr. FLYNT. We thank you for that voluntary appearance and for your cooperation.

Mr. Marshall has some questions.

Mr. MARSHALL. Prior to the hearing you received copies of H. Res. 1040 and 1054?

Ms. SHEKETOFF. Yes, I have.

Mr. MARSHALL. As well as the Rules of the House on Investigative Procedures and Mr. Flynt's opening statement?

Ms. SHEKETOFF. I received everything except Mr. Flynt's opening statement, which I was just handed.

Mr. MARSHALL. If you wish to refer to any of those items during the course of the hearing you may.

Do you have a written statement?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Do you have an oral statement?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Have you produced any documents relating to the work of the Select Committee on Intelligence?

Ms. SHEKETOFF. I had no documents in my possession.

Mr. MARSHALL. In the event you have information given during an executive session of the Select Committee on Intelligence or classified information, or information which may tend to defame or incriminate any individual, please advise this committee so we can take appropriate action under the Rules of the House of Representatives.

Ms. SHEKETOFF. Right.

Mr. MARSHALL. What was your title?

Ms. SHEKETOFF. My title was investigator.

Mr. MARSHALL. Would you outline briefly your duties during the time you were on the staff of the select committee?

Ms. SHEKETOFF. As an investigator I was responsible for organizing hearings on assigned topics. Later on the committee I was given additional responsibility as assistant to staff director.

Mr. MARSHALL. When did you assume your duties with the select committee?

Ms. SHEKETOFF. Late May of 1975.

Mr. MARSHALL. When did your duties terminate?

Ms. SHEKETOFF. March 31, 1976.

Mr. MARSHALL. Did your duties involve any security of classified information?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. Will you outline that aspect of your duties in securing classified information which came to the committee?

Ms. SHEKETOFF. As a member of the staff, I was empowered to request information directly from any agency that I might need it from. Occasionally, in that regard, I would be given the information at the agency and would bring it back to the committee spaces where it would be logged in the committee secured area and kept in the safe. Also, materials I produced from interviews which may have been classified were also kept in the secure area.

Mr. MARSHALL. Who was in charge of logging in classified documents or classified information?

Ms. SHEKETOFF. Miss Hess was the librarian in the back. She had people working for her including a documents clerk. They all did it, I don't know who had ultimate responsibility.

Mr. MARSHALL. Were you also given the responsibility of dealing with distribution of various drafts of the select committee's reports?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. When were you assigned that responsibility?

Ms. SHEKETOFF. When I took on the responsibility of assisting Mr. Field in late December of 1975.

Mr. MARSHALL. Did those duties continue until the select committee had adopted a final report?

Ms. SHEKETOFF. Yes, they did.

Mr. MARSHALL. Would you outline for us the nature of those duties, please, particularly regarding the distribution of any drafts of the select committee report?

Ms. SHEKETOFF. As a draft was prepared in its rough form, it would be given to me and I would handle having it typed, reproduced and storing it. When it was ready January 19 to be distributed, I asked some people who had helped me throughout that time and they took it to the Congressmen's offices and gave it to the Congressmen involved?

Mr. MARSHALL. Was the draft of January 19, 1975, the first complete draft distributed to the members of the committee?

Ms. SHEKETOFF. Yes, it was.

Mr. MARSHALL. Was that assembled well in advance to the 19th, or was it a situation where you worked right up until distribution began?

Ms. SHEKETOFF. We worked up until distribution began.

Mr. MARSHALL. Were you privy to any conversations with the chairman of the committee as to whether the draft of January 19 should be distributed to members in their offices or kept within the committee spaces and have the members come in and review it?

Ms. SHEKETOFF. When we first started on assembling the report I was told the members would have to come to the secure area and read it.

Mr. MARSHALL. Who told you that?

Ms. SHEKETOFF. Mr. Field. It was also his opinion no copy would leave the staff space. In that way he would be able to maintain its security until it was released to the public. After speaking with the chairman he told me the chairman did not like the idea. It wouldn't give the members the time needed to go over it as carefully as it should. Therefore, it would be distributed to each member's office.

He further said the chairman didn't want any undue security on it such as labeling each copy. He said each member should be apprised of the fact the report contained executive meeting material.

Mr. MARSHALL. Were you aware the draft of January 19, 1976, had classified material in it?

Mrs. SHEKETOFF. It had material from executive sessions.

Mr. MARSHALL. Do you know if it had information containing confidential, secret or top secret material?

Ms. SHEKETOFF. I don't know. I know of my own knowledge it had executive session material in it.

Mr. MARSHALL. Classified material, its presence or not was not known to you?

Ms. SHEKETOFF. I knew of the sensitivity of the things in the report because I had worked on the report.

Mr. MARSHALL. Had you had any experience prior to this job with handling classified material?

Ms. SHEKETOFF. Yes. Before I took this job. I had a job with the Commission on the Reorganization of Government for the Conduct of Foreign Policy. I did a study of the security system for them, the security classification system.

Mr. MARSHALL. When you use the phrase "sensitive material", what are you referring to? I am not talking about specific things, I am just trying to get your definition of "sensitive material."

Ms. Sheketoff. Material the executive branch might classify secret or top secret or which our Congress might discuss in executive session, material which is not published at that time.

Mr. MARSHALL. You indicated you were told by Mr. Field there was no labeling of a particular draft.

Ms. SHEKETOFF. Occasionally we would get things from the intelligence agencies which would have stamped on each page, "Copy 1 of 5," "Copy 2 of 5." I assume Mr. Pike did not want that. He felt it implied we didn't trust the members.

Mr. MARSHALL. Was this information reported to you by Mr. Field?

Ms. SHEKETOFF. Yes. I took all my instructions from Mr. Field.

Mr. MARSHALL. You never had any conversation directly with Mr. Pike on this subject?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. I take it, then, the various copies of the draft of January 19, 1976, were not numbered.

Ms. SHEKETOFF. That is correct.

Mr. MARSHALL. Was any consideration given to having members of the select committee sign for a particular copy of the draft.

Ms. SHEKETOFF. No. We were instructed to treat this as executive session material and we didn't do anything different than that.

Mr. MARSHALL. Were there any instructions given to persons who acted as couriers from the select committee spaces to the members carrying the January 19, 1976, draft?

Ms. SHEKETOFF. On Monday the 19th, I asked two or three people to take the copies and I told them to give them directly to the Congressmen.

Mr. MARSHALL. Did you give them any instructions what they were to do in the event the Congressmen were not in their office?

Ms. SHEKETOFF. The Congressmen were all waiting for this. Delivery had been promised many hours before it occurred.

Mr. MARSHALL. Did you have instances where couriers reported back to you that delivery couldn't be made to a Congressman personally?

Ms. SHEKETOFF. That I can't recall.

Mr. MARSHALL. Did you make any effort to ascertain that delivery had been made?

Ms. SHEKETOFF. I assumed, since the phone calls stopped, all the Congressmen got their copies.

Mr. MARSHALL. Did the couriers have to report back to you the person to whom they delivered the draft of January 19?

Ms. SHEKETOFF. No, I assumed since I had instructed them to give them the copies, that is what they had done.

Mr. MARSHALL. Were there any written records kept as to delivery, as to time or who carried it to a particular Congressman?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Were any records of any kind kept?

Ms. SHEKETOFF. Later on Mr. Field asked me if I could account for the copies of the report and I read him a memo accounting of the draft.

Mr. MARSHALL. Were there just 20 copies made of the draft?

Ms. SHEKETOFF. There were 20 copies, one original.

Mr. MARSHALL. There was a total of 21?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. What was done with the original?

Ms. SHEKETOFF. The original was kept in the safe so we would know what the first staff draft looked like.

Mr. MARSHALL. Would any select committee member or any member of the staff have access to that original?

Ms. SHEKETOFF. It was either locked in my safe and no one would have access to it, or it was under one of the larger safes under Miss Hess' control.

Mr. MARSHALL. Do you know in which safe it first occupied?

Ms. SHEKETOFF. I don't know.

Mr. MARSHALL. Was your safe a combination or key safe?

Ms. SHEKETOFF. A key safe.

Mr. MARSHALL. Where did you keep the keys to that safe?

Ms. SHEKETOFF. With me.

Mr. MARSHALL. You took it home with you at the end of the working day?

Ms. SHEKETOFF. I kept it around my neck.

Mr. MARSHALL. There has been some testimony a key was kept under a telephone in the select committee spaces?

Ms. SHEKETOFF. That was another safe.

Mr. MARSHALL. Now, were 13 of the copies then distributed to the members of the select committee?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. That leaves seven copies to account for?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Can you tell me what was done with those copies?

Ms. SHEKETOFF. One copy was handed by Mr. Field to Mr. Rogovin of the CIA; one copy to Mr. Field; one copy to Mr. Donner, counsel to the committee; one copy to Mr. Boos, who was Mr. Field's chief assistant; and I kept one copy to be used for corrections during the committee hearings.

Mr. MARSHALL. Now, if I am not mistaken, that gives us four of the copies.

Mr. SWANNER. Five.

Ms. SHEKETOFF. Five.

Mr. MARSHALL. What about the other two?

Ms. SHEKETOFF. The other two we kept aside to be used by the staff while the Congressmen discussed the final report.

Mr. MARSHALL. Where were those copies kept?

Ms. SHEKETOFF. Those copies were kept in my safe along with the copy I kept to be used for corrections.

Mr. MARSHALL. Now, was it the case that when the select committee met after the original distribution of the January 19 draft, that you had to make some of those copies available to select committee members who hadn't brought their personal copy to the select committee space?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Was there any accounting insofar as signing that particular copy out to a committee member?

Ms. SHEKETOFF. No, I was there and I knew who took it.

Mr. MARSHALL. Was there any instance in which you gave such an extra copy to a select committee member when the copy was not returned?

Ms. SHEKETOFF. This copy you are referring to, I took back some days later.

Mr. MARSHALL. Which copy was that?

Ms. SHEKETOFF. The extra copy Mr. Aspin had.

Mr. MARSHALL. Do you recall the date that was delivered to Mr. Aspin?

Ms. SHEKETOFF. The date it was delivered to him?

Mr. MARSHALL. Yes, ma'am.

Ms. SHEKETOFF. Wednesday the 21st at the committee hearing. He said he didn't bring his volumes with him and he took one of the staff volumes.

Mr. MARSHALL. When you say he took one of the staff volumes—

Ms. SHEKETOFF. There were two volumes of the report.

Mr. MARSHALL. Did he take both volumes?

Ms. SHEKETOFF. At another time he took another volume.

Mr. MARSHALL. On the first occasion, were both volumes of the staff copy of the January 19 draft delivered to Mr. Aspin?

Ms. SHEKETOFF. They were not delivered to him ever. We were all in the same room, he stepped to the end and said, "I have forgotten my copy, may I use one of yours?" And whoever it was said, "Sure."

Mr. MARSHALL. Mr. Aspin removed that copy from the room?

Ms. SHEKETOFF. Yes, he took it to his office.

Mr. MARSHALL. Was Mr. Aspin contacted that day to recover that copy?

Ms. SHEKETOFF. No.

Mr. MARSHALL. You say it was recovered a little while later?

Ms. SHEKETOFF. The next week when I had a little more time, I took care of it.

Mr. MARSHALL. Are you referring to January 26, the following week, when you say the next week?

Ms. SHEKETOFF. Yes, I think so.

Mr. MARSHALL. How did you take care of it?

Ms. SHEKETOFF. I went up to his office and took it.

Mr. MARSHALL. Did you make any query as to who had access to that particular copy while it was in Mr. Aspin's control?

Ms. SHEKETOFF. No. There was no need to. That was a time the committee had voted to make the report public.

Mr. MARSHALL. Are you referring to a vote on January 23, 1976?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Is that the vote where the committee adopted the report?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. There was no discussion at that time as to whether that vote constituted the will of the committee to make the report public?

Ms. SHEKETOFF. Yes, sir; there was. I was told to get what had been passed ready to go to the printer and to arrange for enough copies on Friday, January 30, so all the press who had been covering us would get their copies right away.

Mr. MARSHALL. Who gave that instruction?

Ms. SHEKETOFF. Mr. Field.

Mr. MARSHALL. When?

Ms. SHEKETOFF. When the committee voted.

Mr. MARSHALL. On January 23?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. Were you present when the committee voted?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. The records show that vote was simply an adoption of the report, not an expression of the will of the committee that the report be made public. Is that your recollection or do you believe those records to be incorrect?

Ms. SHEKETOFF. I just believe you are misinterpreting them.

Mr. MARSHALL. Help me to interpret them.

Ms. SHEKETOFF. Well, in my work on the Hill, I have always found when a committee votes to pass its report to the Clerk of the House and to have a certain number of copies printed, that report is made public in one swoop. I was very surprised to learn this was not the case.

Mr. MARSHALL. Do you recall during that vote, that that vote constituted a vote that it be made public?

Ms. SHEKETOFF. No, I think most Congressmen just assumed it would be made public.

Mr. MARSHALL. And I take it that was your assumption based upon the custom as you understand that custom to be on the Hill?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Now, when Mr. Field instructed you to go to the printer for additional copies, was there any discussion as to security of those copies before they were to be released?

Ms. SHEKETOFF. Well, because of the length of the report and the fact it wouldn't be totally ready until Tuesday, we wouldn't get it back from the printers until Friday, and, therefore, there was no need for security. When we got it, it would go right to the Clerk of the House.

Mr. MARSHALL. Now, will you tell me again when you received the instruction from Mr. Field as to getting the report to the printers?

Ms. SHEKETOFF. On Friday 23d, when the committee voted to accept the amended staff draft, I had many instructions from Mr. Field, including the instruction that I have the editor go over the correct thing, correcting grammar and punctuation and spelling, to get it ready, so that as soon as we could, we could deliver everything perfect to the printer.

Mr. MARSHALL. Who was the editor?

Ms. SHEKETOFF. Jody Scheiber.

Mr. MARSHALL. Was a copy of the report as adopted by the committee on January 23, 1976, ever transmitted to the printer?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. When was that done?

Ms. SHEKETOFF. I believe on Tuesday, January 27, but I really don't remember.

Mr. MARSHALL. Who transmitted that copy?

Ms. SHEKETOFF. We had two Government Printing Office people working in our staff space and I arranged with them—we divided it in half—I gave them the first half as soon as it was done. They transmitted it to GPO. The galleys were given back to us. I believe they took care of the galleys and we did a quick proofread to make sure there were no mistakes, then the galleys went back to the two GPO people working within the committee staff.

Mr. MARSHALL. Who were the two GPO people working in the committee space?

Ms. SHEKETOFF. Ken Seidel and Marty, somebody.

Mr. MARSHALL. Did you give them copies of the draft on January 23?

Ms. SHEKETOFF. No; the committee voted the draft as it was with two small additions. One was the chairman and Mr. McClory were to meet and clear up a person's name they thought had been used too much and one other small thing had to be taken care of.

Mr. MARSHALL. Did you read the publication "Village Voice" of January 16 and 23?

Ms. SHEKETOFF. No.

Mr. MARSHALL. You have no idea of what version of the select committee's report appeared?

Ms. SHEKETOFF. At one point after it had been released, Mr. Pike asked us to figure out if we could figure it out. I was handed some executive session transcripts but I can't pinpoint which version it was.

Mr. MARSHALL. Were you able to make any conclusions at all with the transcripts?

Ms. SHEKETOFF. It didn't look like the original staff draft.

Mr. MARSHALL. Did it look like a draft which had been changed after January 19?

~~Ms. SHEKETOFF.~~ Yes.

Mr. MARSHALL. Were you able to pinpoint it with any greater specificity?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Did it look like the January 23 draft?

Ms. SHEKETOFF. I don't recall. I was given another small assignment, I had other things to do at the time.

Mr. MARSHALL. Was it January 27 when you actually gave the report to the two persons from GPO?

Ms. SHEKETOFF. Either the 26th or the 27th.

Mr. MARSHALL. Now, between the time the select committee voted on January 23 to adopt the report and the time it was turned over on either the 26th or 27th to the GPO persons, as you have testified, what was done with the copies within the select committee spaces as well as the originals?

Ms. SHEKETOFF. The originals were kept wherever they had been all that week.

Mr. MARSHALL. In one of the safes?

Ms. SHEKETOFF. Yes.

My corrected copy version was still in my safe. One of our versions had gone out to the executive branch on Thursday the 22d, and Mr. Aspin still had the other one.

Mr. MARSHALL. You say one version had gone out to the executive branch on the 22d. Do you know who delivered that version?

Ms. SHEKETOFF. There was a meeting early in the morning on the 22d, another in the afternoon, and another late at night with some people from the CIA, Mr. Packman of the State Department and people from other agencies. Sometime during that time they needed a copy of the report as it had been amended so they could make recommendations for additional changes they wanted. Someone gave them the report. I really don't remember it at all.

Mr. MARSHALL. Did they take one of the select committee copies with them when they left the meeting?

Ms. SHEKETOFF. They took one of the staff copies.

Mr. MARSHALL. Do you know who took that copy?

Ms. SHEKETOFF. I think it was Mr. Packman, but I don't remember exactly.

Mr. MARSHALL. Do you know who gave Mr. Packman permission to take that copy?

Ms. SHEKETOFF. I am sure Mr. Boos or Mr. Field did.

Mr. MARSHALL. You did not give such permission?

Ms. SHEKETOFF. I don't remember. I may have.

Mr. MARSHALL. Do you recall making a telephone call to Mr. Gregg the following day regarding that copy?

Ms. SHEKETOFF. No. I understand he and Mr. Rogovin said I did, I just don't remember.

Mr. MARSHALL. Now, let us go back to distribution for a moment. After the difficulties of the January 19 draft to which you have testified, were their changes made in that draft?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Were these changes distributed to the various members of the select committee?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Was that distribution carried out in the same manner as the original draft?

Ms. SHEKETOFF. Once the members got the copies of their report, they kept them; as changes were made, the staff was responsible for making new pages so that if any page had a change on it, the member would get that page—it was changed for him either that night or the next day—in an envelope.

Mr. MARSHALL. Do you have any recollection of how the changed pages were accounted for? By that I mean the change was made to a particular select committee member. Were the changed pages then physically carried back to the select committee staff, the old pages?

Ms. SHEKETOFF. No; our staff people would go to the member's office, deliver the envelope. The members could either say, "Would you please put the pages in," or else they would take the envelope and put the pages in themselves.

Mr. MARSHALL. I take it the January 19 with the changes then subsequently became the January 23 draft which was finally adopted?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Do you recall a copy of the January 23 being delivered to Mr. Robert or Bob Brauer on January 23?

Ms. SHEKETOFF. I don't remember.

Mr. MARSHALL. Are you saying you have no memory one way or another?

Ms. SHEKETOFF. To be perfectly honest, I really don't remember at all.

Mr. MARSHALL. At that time did you have control, in your judgment, as to where copies were and who was getting copies?

Ms. SHEKETOFF. That day, the chairman had asked me where all the copies were and I had been able to account for all of them, which is why I might have called Mr. Gregg or Rogovin to determine which one left with our report.

When Mr. Pike asked me to account for all the copies, I was able to, so I could assume if there was something missing, we had accounted for it.

Mr. MARSHALL. You mean you were able to ascertain the whereabouts of 20 copies plus one original?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. And you accounted for those completely?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Did you make any writing or memorandum of that accounting?

Ms. SHEKETOFF. I may have given him a memorandum or he may have asked me to come up in person, I really don't remember.

Mr. MARSHALL. Do you recall a distribution being made specifically to Mr. Lehman, a member of the select committee?

Ms. SHEKETOFF. You mean on January 19?

Mr. MARSHALL. Yes, ma'am.

Ms. SHEKETOFF. No; I don't remember that specifically.

Mr. MARSHALL. Do you recall Mr. Lehman coming to the committee space on January 24, that is a Saturday, in an attempt to locate a copy which was supposed to have been distributed to him?

Ms. SHEKETOFF. I really don't remember. I was there Saturday. I got there at about 9:30 or 10. I was involved with Mr. Kasten, who was

interested in getting the CIA copy of the January 23 version and so he may have been there. I just wouldn't have seen him.

Mr. MARSHALL. This committee has heard testimony from Mr. Lehman that he did not receive his copy in his offices, that the courier from the select committee then apparently returned to the select committee, and that he attempted to obtain his copy on January 24, a Saturday, that he was unable to do so at the select committee spaces, and that another copy was made up rather hastily for him, and delivered to him on that day.

Do you recall anything about that?

Ms. SHEKETOFF. I recall that Mr. Lehman's daughter was very sick at the time and he was spending a lot of time in the hospital, and we may have taken his copy to deliver to him at the hospital and missed him, and then the person who had that copy, by the time they returned to the staff space, Mr. Lehman had been given another copy. I don't recall—I do recall once having to deliver something to him at the hospital, but I don't recall if that was the time.

Mr. MARSHALL. Were there any other copies made of the January 19 draft with changes other than these 20 copies plus the original that you have already testified to?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Was there a log kept on the Xerox machine within the select committee spaces to determine what copies were made of what documents at any time during the month of January 1976?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Did you ever make any complaint about that?

Ms. SHEKETOFF. No.

Mr. FLYNT. A recorded rollcall vote is in progress before the House. The committee will stand in recess to enable the members to respond to the rollcall vote and will reconvene immediately following the vote or immediately following a second vote, which may immediately follow the one now in progress.

[Short recess.]

Mr. FLYNT. The committee will come to order.

The committee is in open session.

A quorum is present for the purpose of taking testimony and receiving evidence.

Ms. Emily Sheketoff is on the stand.

Counsel will proceed.

Mr. MARSHALL. Ms. Sheketoff, remember you are under oath.

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Ms. Sheketoff, following the assembling of the January 23 report, did Mr. Field take a copy of that report home?

Ms. SHEKETOFF. I think he took a copy home, and the reason I think so is because on Monday I had a meeting with the editor, Jody Scheiber, and he had editorial corrections done which led me to believe that he had done it at home, but I really don't know whether he did it or not.

Mr. MARSHALL. You didn't see him physically take it out of the office?

Ms. SHEKETOFF. No, I didn't.

Mr. MARSHALL. What time was the meeting with Miss Scheiber on Monday morning?

Ms. SHEKETOFF. Oh, early, probably 7 or 8 o'clock.

Mr. MARSHALL. Did Miss Scheiber have a copy of the January 23 report also in her possession?

Ms. SHEKETOFF. I know that she had one at home because she asked me if she could take something home to work on it because it was too loud and hectic to get any work done at the office.

Mr. MARSHALL. And did you see her take that copy home?

Ms. SHEKETOFF. I didn't see her but I gave her permission to do it, so I assume she did.

Mr. MARSHALL. Were there any other persons who took copies of the select committee report or draft of that report from the committee's space?

Ms. SHEKETOFF. You mean staff people?

Mr. MARSHALL. Staff or committee persons.

Ms. SHEKETOFF. I have no idea what the Congressmen did with their copies. The staff would take the copies to the hearings the week of January 19. Other than that I never saw nor do I know of any staff person who ever took one anywhere else.

Mr. MARSHALL. So as I understand your testimony then, with regard to the draft of January 23, 1976, that was actually adopted by the select committee on that date, you have reason to believe that Mr. Field took a copy home, and you also have reason to believe Miss Scheiber took a copy home.

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. Any other persons who would have taken that copy of the January 23 draft home?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. Or outside the committee space?

Ms. SHEKETOFF. The GPO people took it to GPO.

Mr. MARSHALL. Did they do that on the 23d of January?

Ms. SHEKETOFF. No; they did it on Monday the 26th or Tuesday the 27th.

Mr. MARSHALL. Could you tell me how many copies of the January 23, 1976, draft plus the original were left in the select committee spaces when you left on January 23d, that is left to go home?

Ms. SHEKETOFF. I have no idea.

Mr. MARSHALL. Was there any accounting made at that time as to the whereabouts of copies of the January 23 draft?

Ms. SHEKETOFF. I had a list with all 13 Congressmen on it, and after each name I either said "Kept copy, deliver Friday, deliver Saturday" or "Hold until Monday." Mr. Milford was in Texas until Monday, so we held his copy. Some Congressmen kept theirs, and we just gave them the corrected pages for that day, and then the other Congressmen, some of them were going to leave very soon on Friday, so they weren't going to pick theirs up until Saturday, and others wanted it Friday, so those were the priority rush, and they were delivered. Whatever I had left with that list I just stuck in the safe.

Mr. MARSHALL. Do you know where that list is now?

Ms. SHEKETOFF. I shredded it.

Mr. MARSHALL. You shredded it?

Ms. SHEKETOFF. As soon as I completed. I made the list only so that I would know which Congressmen I had to rush through because they were waiting for it on Friday.

Mr. MARSHALL. Is it correct then that you cannot now account for where copies were on January 23, 1976?

Ms. SHEKETOFF. Yes, sir, I cannot.

Mr. MARSHALL. There has been testimony before this committee that the CIA and State Department representatives took two extra copies with them from the meeting on the evening of January 22 that extended into the morning of January 23, 1976. You have mentioned one such copy that you believe was taken.

Ms. SHEKETOFF. Well, sir, they brought copies in with them. What may have happened is they switched them, and they left, I believe that they left with one more copy than they came in with. I have no idea how many copies they switched with our corrected copies while they were there.

Mr. MARSHALL. On January 24 you said that you were in the select committee spaces on that morning.

Ms. SHEKETOFF. Saturday?

Mr. MARSHALL. Yes, ma'am.

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. Who else was there from the committee staff?

Ms. SHEKETOFF. The guard, there was always a guard there, Miss Yamamoto was there for a while. I think Mr. Field may have come in later in the afternoon.

Mr. MARSHALL. What is your basis for thinking Mr. Field came in later in the afternoon?

Ms. SHEKETOFF. I think I saw him every day. I don't know, I might have seen him at his home. He may have called in and asked me to come to his house.

Mr. MARSHALL. Do you remember coming to Mr. Field's house?

Ms. SHEKETOFF. No.

Mr. MARSHALL. On January 24?

Ms. SHEKETOFF. To be honest, I really don't remember at all. I mean it is all sort of a blur, it was so long ago.

Mr. MARSHALL. But you have no recollection of being asked to come to Mr. Field's house on January 24, 1976.

Ms. SHEKETOFF. No; in the space of about January 5 until January 29, Mr. Field occasionally would call me at the office and ask me to bring something to his house, so it may have happened on that day. Maybe it didn't.

Mr. MARSHALL. Were you ever called by Mr. Field and asked to bring a copy of the select committee report or a draft of that report to his home?

Ms. SHEKETOFF. No.

Mr. MARSHALL. When you left on January 23, 1976, whatever time you left that day, did you take a copy of the select committee's report with you?

Ms. SHEKETOFF. No; I didn't.

Mr. MARSHALL. You also mentioned that some changes were made after the January 23, 1976, draft was adopted as the select committee's report, to your words I believe, to clean up a name.

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. You mean delete that name?

Ms. SHEKETOFF. Well, sir, Henry Kissinger's name was in it a lot, and some of the members felt that certain characterizations of him

might have been unfair, and they would prefer that instead of referring to him as Henry Kissinger, they refer to him as the Secretary of State, and sometimes it was changed to a State Department official.

Mr. MARSHALL. When were these changes made?

Ms. SHEKETOFF. Mr. Pike and Mr. McClory met, and went through the document, the report, and had a list of changes which they gave to Jackie Hess and she gave them to me and I incorporated them in the draft that eventually went to the printer.

Mr. MARSHALL. Do you recall when those changes were made?

Ms. SHEKETOFF. No; I don't.

Mr. MARSHALL. You don't recall whether it was on a Friday, the 23d, or a Saturday, the 24th?

Ms. SHEKETOFF. I honestly don't remember.

Mr. MARSHALL. Or perhaps even a Monday, the 26th?

Ms. SHEKETOFF. I honestly don't remember.

Mr. MARSHALL. Was there a time during the period between distribution of January 19, 1976, draft of the select committee's report, and the January 23, 1976, adoption of the select committee's report, when you or members of the committee staff called the offices of various Congressmen in an effort to locate copies of the report or drafts of the report?

Ms. SHEKETOFF. Yes, sir, I don't remember when it was, but we wanted to make sure that Mr. Aspin was in fact the one who had taken both volumes during the committee hearings, and so Miss Hess and her people called all the congressional offices to make sure that no Congressman had more than one copy of each volume.

Mr. MARSHALL. Did Miss Hess report to you what the results of those telephone calls were?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. What did she say?

Ms. SHEKETOFF. That Mr. Aspin was the one who had two copies of both volumes.

Mr. MARSHALL. In other words, he had the copy which had been distributed to him in the distribution of January 19; is that right?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. As well as the copy he picked up on Wednesday, January 21, at the select committee spaces.

Ms. SHEKETOFF. Well, he picked up one volume on Wednesday, the 21st, and the second volume whenever we discussed that. I don't remember which day it was.

Mr. MARSHALL. But it was after the 21st of January.

Ms. SHEKETOFF. It could have been the afternoon of the 21st or it could have been the 22d. I really don't remember.

Mr. MARSHALL. Did Miss Hess state that she had talked personally with Congressman Aspin?

Ms. SHEKETOFF. No; I assume she talked to whoever in that office took care of liaison with our committee.

Mr. MARSHALL. When Congressman Pike asked you to account for the 20 copies—you recall your earlier testimony on that—did you do that by physically contacting those persons to whom copies had been distributed, and being assured that that person had those copies, or did you simply make certain assumptions that they had the copies, based upon what you had instructed the couriers to do?

Ms. SHEKETOFF. I believe that it was about the same time that Miss Hess made all those phone calls, and she was assured that each Congressman had one copy.

Mr. MARSHALL. So, in other words, you did not do the accounting yourself. It was Miss Hess that made the accounting.

Ms. SHEKETOFF. Yes; I asked her to take care of it. I was busy, and all I needed was the answer.

Mr. MARSHALL. So you really don't know whether Miss Hess talked to each Congressman personally or not; is that correct?

Ms. SHEKETOFF. I have no idea.

Mr. MARSHALL. And you really don't know the physical whereabouts of the staff copies that you described; is that correct?

Ms. SHEKETOFF. Well, sir, Mr. Pike wanted to know where the copies were. He wanted to be sure that we knew where the copies were, because there had been news reports every day that week, and I assured him that we knew where the copies were. If the Congressman said he had it and he had really given it away, there was really not very much we could do about it.

Mr. MARSHALL. But the basis of your assurance was Miss Hess' efforts to locate those copies and not your own personal efforts; is that correct?

Ms. SHEKETOFF. I may have asked some of the people. I really don't remember. I remember I asked Miss Hess to help me call some of the Congressman's offices. We may have divided it or she may have taken care of it and said, "I am not doing anything."

Mr. MARSHALL. Did you have access to the combinations of the safes in the select committee spaces?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Did the staff generally have access to those combinations?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. Who were the persons who had access to safe combinations besides yourself?

Ms. SHEKETOFF. Are we going to break, or am I going to talk?

Mr. FLYNT. Answer the question and then we will suspend.

Ms. SHEKETOFF. OK.

Miss Hess was in charge of the safes and the combinations and Carolyn Andrade also had a copy in case Miss Hess was not there and could not open the safes, and toward the end of the committee when I took on the responsibility of assisting Mr. Field I had the combinations to the safes for a brief time but could not use them so I gave them to Mr. Boos.

Mr. FLYNT. A rollcall is in progress on the floor of the House. The committee will suspend and will reconvene immediately upon the completion of the rollcall.

[Brief recess].

Mr. FLYNT. The committee will come to order.

The committee is in open session. A quorum is present for the purpose of taking testimony and receiving evidence.

Mr. Marshall?

Mr. MARSHALL. Ms. Sheketoff, you remember you are still under oath.

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. We were talking about safe combinations at the time we had to suspend. Where were the combinations physically kept, that is, when they were reduced to writing? Do you know?

Ms. SHEKETOFF. Miss Andrade had index-size cards with combinations on them and I have no idea where she kept them. Miss Hess had a similar set of combinations and she kept them with her. I had the combinations in January and I had to Xerox Miss Hess' and I turned my Xerox copy over to Mr. Boos and I believe he kept them with him.

Mr. MARSHALL. When did you return your copy over to Mr. Boos?

Ms. SHEKETOFF. The day that I made the Xerox. I attempted to open safes and just could not get the hang of how to do it so there was no point in my having them. Since Mr. Boos was also always there he was the logical person to keep them because he could open the safes. He had worked with them before.

Mr. MARSHALL. Did Congressman Dellums generally leave his copy of the select committee's report or draft of the report with the committee at all times, or do you know?

Ms. SHEKETOFF. He had his copy with him the week of the 19th and I know that he turned it into us on Friday, the 23d, to have it checked over to make sure it was current and I really don't know what happened to it after that. I believe he took it back to write his additional views and then he returned it to us for safekeeping.

Mr. MARSHALL. What about Congressman Pike? Did he generally leave his copy within the committee spaces, or did he retain a copy, or do you know?

Ms. SHEKETOFF. I don't know.

Mr. MARSHALL. Did you have anything to do with preparing footnotes to the select committee draft?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Were you in charge generally of footnoting or was that a responsibility divided among the staff?

Ms. SHEKETOFF. Well, Mr. Field felt that the entire report should be written in one form of writing, one person's style, so he would write whatever it was that the other people had given him, the investigators or whoever had been assigned a topic to write, and he would then give me the text that he had written indicating where he wanted a footnote and then I would assign people to look up that footnote.

Mr. MARSHALL. Do you remember a particular footnote involving Senator Jackson?

Ms. SHEKETOFF. Do I remember how it came to be?

Mr. MARSHALL. No, ma'am. Just, do you remember there was a footnote involving Senator Jackson?

Ms. SHEKETOFF. Yes.

Mr. MARSHALL. The first time you were aware of that footnote do you recall the number of the footnote?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Does No. 119 strike a bell in your memory?

Ms. SHEKETOFF. I have no idea.

Mr. MARSHALL. Do you recall whether that footnote involving Senator Jackson was shifted from place to place as various drafts of the report were made?

Ms. SHEKETOFF. The only thing I recall about that footnote was that it was not in one of the earliest drafts that was done for Mr. Field but

it was added some time on the weekend of January 17, 18, around there, and because of that we had a small mistake.

It was page 73 and there was no footnote and in looking it over someone realized that we were using an old page 73 which had been corrected. That was one of the corrections on that page. So the page was redone and on the 19th, it was inserted in the binders that were being distributed to the Congressmen.

Mr. MARSHALL. So the footnote concerning Senator Jackson appeared in the draft of January 19?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Do you know at whose instance that footnote was inserted?

Ms. SHEKETOFF. I imagine either whoever had been assigned to write that portion or when Mr. Field rewrote it. I don't really know.

Mr. MARSHALL. You don't really know. All right.

From that page where the footnote was that you testified to was the footnote moved to another page in subsequent drafts or did it always remain on that page?

Ms. SHEKETOFF. As far as I can recall it was always on page 73.

Mr. MARSHALL. Was there any discussion as to what the position of that footnote should be in the various drafts by either members of the select committee or by staff or by Mr. Field?

Ms. SHEKETOFF. No, sir.

The only time it was ever contemplated was to footnote a particular paragraph which was at the end of the section. It was used to prove a point that was trying to be made and it was always used right there.

Mr. MARSHALL. Do you recall whether that particular section was moved around in the various drafts following the January 19—

Ms. SHEKETOFF. No, sir, it was not.

Mr. MARSHALL. Then you have no recollection that what was then footnote 119 became footnote 42 or 42-A?

Ms. SHEKETOFF. I cannot recall the numbers but if it was footnote 42 it would have occurred, I believe, in a page sooner than 73.

Mr. MARSHALL. Who one the staff had responsibility for security of classified documents?

Ms. SHEKETOFF. Mr. Field.

Mr. MARSHALL. Was Miss Hess given any responsibility to your knowledge concerning security of classified documents?

Ms. SHEKETOFF. Miss Hess ran the secure area. She developed procedures which the staff followed, but it was my understanding that Mr. Field always took ultimate responsibility for that. He approved the procedure.

Mr. MARSHALL. Did you have any responsibility for security of classified documents?

Ms. SHEKETOFF. Well, I guess I was in a similar position. He would ask me to institute a procedure, to devise a procedure, and institute it and I would do just that.

Mr. MARSHALL. What sort of procedures are you talking about?

Ms. SHEKETOFF. Well, once we had started to pull together materials for the staff draft he wanted them kept secure so that the members would all get the information at the same time.

Mr. MARSHALL. What procedure did you institute to do this?

Ms. SHEKETOFF. I would parcel out work to people. When they finished it they would have to return it to me so that I always had all the work and kept in a central place.

Mr. MARSHALL. This was when the draft of January 19 was being assembled?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. As well as when changes were being made?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Mr. Daniel Schorr had stated in an article in Rolling Stone of April 8, 1976, that he had possession of the select committee's report on January 25, 1976. January 25 is a Sunday for your information.

Did you give the select committee's report or a draft of the report or any portion of the text of the report or a draft to Mr. Schorr or to any person?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SHEKETOFF. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of circumstances surrounding the publication of the select committee's report or a draft of the report or any text from the report or the draft?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. Did you give the select committee's report or make any part of the report or draft of the report available to anyone outside the Select Committee on Intelligence?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SHEKETOFF. Mr. Field gave it to Mr. Rogovin.

Mr. MARSHALL. Other than that?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. And I take it that was a distribution to Mr. Rogovin of the January 19 draft?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Did Mr. Field make any other distribution to Mr. Mr. Rogovin that you know of?

Ms. SHEKETOFF. Not that I know of, sir.

Mr. FLYNT. Mr. Hutchinson.

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Mitchell.

Mr. MITCHELL. Just one, Mr. Chairman.

Was there any confusion in the minds of the staffers as to the difference between executive session information and classified information? You seem to use them interchangeably.

Ms. SHEKETOFF. Well, sir, we received classified information from intelligence agencies. Once we used it in our session we did not have the authority to classify things so we then referred to it as executive session material.

Mr. MITCHELL. I thought you were referring to just anything that happened within the committee during an executive session as executive session material, but that is not what you are referring to?

Ms. SHEKETOFF. Well, sir, we have this problem. We didn't have a problem with the classifications. We were briefed on them and we understood what they meant and why, But, I understand that we were in a sort of specialized position and there has now been this controversy about classification and things like that and I am just not qualified to comment on that.

Mr. MITCHELL. So you just lump everything that is classified under executive session?

Ms. SHEKETOFF. Yes, sir.

Mr. MITCHELL. The confusion was mine then.

Thank you.

Thank you, Mr. Chairman.

Mr. FLYNT. Thank you, Mr. Mitchell.

Mr. Marshall?

Mr. MARSHALL. Ms. Sheketoff, I have some additional questions.

Chairman Pike has made available to this committee two sets of a draft of the select committee report. One set, which consists of two volumes, has on the outside of each volume a label on which is written "Emily—Original."

Mr. Bowers, would you show the witness the copies that I am referring to?

Let the record show the witness is examining those copies now.

With regard to the copies labeled "Emily—Original" were these copies maintained by you as staff copies?

Ms. SHEKETOFF. These were the copies I referred to that I made corrections on.

Mr. MARSHALL. What was the purpose served by this copy and the corrections made?

Ms. SHEKETOFF. When we would leave a committee hearing at the end of the day I would know exactly what the committee had voted on as far as how to change anything they wanted to do and this facilitated my then assigning people to retype the pages with the changes and distribute them.

Mr. MARSHALL. This then was the master copy which you kept up to date so that you would know at any given time what the committee's action had been and what the current draft consisted of; is that right?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Where was that copy kept?

Ms. SHEKETOFF. This copy was kept in my safe.

Mr. MARSHALL. Did anyone have access to that safe other than you?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. That is, that was the key that you wore around your neck?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. The second set of drafts of the committee report that Chairman Pike has furnished to us labeled with a red border simply marked "volume I" and "volume II."

The pages in this set contain a number of taped-out words with new words inserted.

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Can you tell us what that set was, that draft was?

Ms. SHEKETOFF. Yes, sir.

These were the originals that we maintained. On occasion when a word would be changed, when we changed "intelligence by agencies" to "intelligence agencies" there was a rush. Instead of retyping the entire page we would tape over the type and on the tapes type in "intelligence" and then just Xerox that page.

Mr. MARSHALL. Was this particular draft also kept current depending upon what the committee voted?

Ms. SHEKETOFF. No, sir.

This was kept basically as the January 19 version except a few pages were changed.

Mr. MARSHALL. But that was not kept current at all times?

Ms. SHEKETOFF. No, sir.

Mr. MARSHALL. But the "Emily—Original" was kept current at all times?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Where was that copy kept, the ones just simply labeled "Volume I" and "Volume II"?

Ms. SHEKETOFF. I believe it was either in my key safe or in one of Miss Hess' combination safes. I am not sure which place.

Mr. MARSHALL. You don't know who had responsibility for securing that copy?

Ms. SHEKETOFF. Well, I was responsible but I really don't remember which place it was.

Mr. MARSHALL. Which of the copies, if either, was sent to the printer?

Ms. SHEKETOFF. Neither. Either Mr. Donner or Mr. Boos' copy, or maybe it was the staff copy—I don't really remember—was corrected by Miss Scheiber, and that was the copy that went to the printer.

Mr. MARSHALL. Would Miss Scheiber have been working from the copy designated "Emily—Original" or would she have been working from another copy?

Ms. SHEKETOFF. No; she had to be working from another because I had to keep these in case there was a question and she was marking them up with grammatical corrections and things like that.

Mr. MARSHALL. I take it then the copy before you marked volume I and volume II, copies of that would have been distributed to the select committee members; is that right?

Ms. SHEKETOFF. On January 19?

Mr. MARSHALL. Yes, ma'am.

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. And do you know whether this was in fact Chairman Pike's copy that you have before you marked volume I and volume—

Ms. SHEKETOFF. Sir, neither one of these was Mr. Pike's copy.

Mr. MARSHALL. Do you know the disposition of Chairman Pike's copy, that is, the one that was distributed to him on January 19?

Ms. SHEKETOFF. Well, sir, on January 29 when the House voted not to release the report to the public Mr. Pike was very concerned about the security of it and we shred all the copies that we had plus all of the odd pages that we had, but he wanted us to maintain one corrected copy, the originals, and one copy that was sent over to the Clerk and he kept those in his safe.

Mr. MARSHALL. When the committee voted on January 23, 1976, to adopt the report was there any discussion by anyone as to distributing advance copies to the press?

Ms. SHEKETOFF. Sir, I think but I don't recall there was a discussion of giving an advance copy to the press so that they could analyze it before the deadline, a hold-for-release sort of thing, and I believe Mr. Pike's feeling was that that would be unfair to the minority who had additional views.

Mr. MARSHALL. Do you know if any advance copies were distributed to the press or to anyone acting on behalf of the media?

Ms. SHEKETOFF. Not to my knowledge.

Mr. MARSHALL. Who was discussing this point; do you recall?

Ms. SHEKETOFF. Some Congressmen.

Mr. MARSHALL. Some select committee members?

Ms. SHEKETOFF. Yes, sir.

Mr. MARSHALL. Do you know the names of the persons?

Ms. SHEKETOFF. I don't remember.

Mr. MARSHALL. But your recollection is that Chairman Pike vetoed any advance distribution to the press of the January 23, 1976, select committee report?

Ms. SHEKETOFF. Sir, I don't think it came down to that specific a discussion. It was brought up that possibly there would be a distribution to the press and Mr. Pike said, no, that really wouldn't be fair to the minority who had additional views, and that was the end of the discussion.

Mr. MARSHALL. Were there any records kept of how many copies were shredded of any draft of the select committee's report?

Ms. SHEKETOFF. No, sir, we just shred them.

Mr. MARSHALL. Do you have any idea how many you did shred?

Ms. SHEKETOFF. Before we did Mr. Pike wanted to be sure that we could account for all of them we did and then we shred whatever we had. Some Congressmen had turned their copies back into us and other Congressmen said they were going to keep them, that they would obviously be keepsakes in the years to come since they would never be published.

Mr. MARSHALL. When you say they wanted you to account for them, did you actually personally account for them?

Ms. SHEKETOFF. No; Mr. Field asked me if I could account for everything and I think I wrote him a memo telling him the Congressmen who had returned their copies to us and those who hadn't and where our copies had been, so we totaled 20.

Mr. MARSHALL. Do you know where that memo is today?

Ms. SHEKETOFF. I am sure we shredded it.

Mr. MARSHALL. Do you have any recollection of which Congressmen had kept copies and which had returned copies, as you testified?

Ms. SHEKETOFF. I believe Mr. Johnson and Mr. Giaimo wanted to keep their copies. They said they wanted to on Thursday evening after the vote. Mr. Dellums was worried about security so he wanted to turn his back in; so I am pretty sure he did. I just don't remember anybody else.

Mr. MARSHALL. You don't remember the other Congressmen, what they wanted to do or what they did, in fact, with their copies?

Ms. SHEKETOFF. No; they probably would have turned them in to Jackie and I would have asked her which ones had turned them in and she probably told me. The only concern was that we could account for where 20 were.

Mr. MARSHALL. That is all I have, Mr. Chairman.

Mr. FLYNT. Are there further questions?

Ms. Sheketoff, you may step down with the thanks of the committee for your appearance and cooperation with the committee and investigative staff. We thank you very much.

The committee stands adjourned until 11 o'clock tomorrow.

[Whereupon, at 5:33 p.m., the committee was adjourned to reconvene at 11 a.m., Thursday, July 29, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

THURSDAY, JULY 29, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to recess, at 11:20 a.m., in room 2212, Rayburn House Office Building, Hon. Charles E. Bennett, presiding.

Present: Representatives Flynt, Price, Bennett, Spence, Quillen, Hutchinson, Quie, and Mitchell.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, Andrew Whalen, Miss Jan Loughry, staff members; and Robert Carr, associate counsel.

Mr. BENNETT. The committee will come to order.

There is a quorum present.

I now ask the first witness, do you solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. MURPHY. I do.

TESTIMONY OF HON. MORGAN MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. BENNETT. Welcome to our committee.

The staff will inquire.

Mr. QUILLEN. Mr. Chairman, I want to welcome my colleague on the Rules Committee, Mr. Murphy. We are glad to have you.

Mr. MURPHY. Thank you, Jim. It is nice to be here.

Mr. QUILLEN. I also want to state that I know his dedication in the intelligence activities and his dedication on the select committee. I want my colleagues on this committee to know that.

Mr. BENNETT. I think all Members of Congress who serve with him know him to be an excellent Congressman.

Mr. MURPHY. Thank you, Mr. Chairman, and, Jim, for those kind words.

Gentlemen, I brought with me today two volumes——

Mr. MARSHALL. Excuse me, Mr. Murphy, before you start may I ask you to identify yourself, your full name for the record?

Mr. MURPHY. My name is Morgan F. Murphy, Member of Congress from the Second District of Illinois.

(381)

75-491-76-25

Mr. MARSHALL. You are, of course, appearing at the invitation of this committee?

Mr. MURPHY. That is correct.

Mr. MARSHALL. If you will, sir, if you have a statement you wish to file with the committee, please go ahead.

Mr. MURPHY. I have no written statement to file with the committee. I would just like to say pursuant to the invitation from the chairman of the committee, I have brought with me today two volumes of the January 19 draft report of the Select Committee on Intelligence with changes inserted in the volume, changes I received on January 27.

I don't know how many pages there were, but I made the changes myself. I have an envelope marked "classified materials, sensitive," hand delivered from the Select Committee on Intelligence to myself at my office, and they include subpoenas with schedules of items required to be produced by earlier subpoenas, Assistant to the President for National Security Affairs, to the Director of Central Intelligence, to Director of Defense Intelligence Agency, Director of National Security Agency, Director of Central Intelligence, to which there was no compliance at all regarding Vietnam data, and additionally nine pages charging noncompliance with written requests. These materials have all been classified by the Select Committee on Intelligence as classified.

I kept them in my safe. I am the only one who had access to that safe, the only one who has had access to those volumes.

I did refuse to give one of the investigators of this committee the opportunity to study these volumes because I was not sure as to his status, whether or not he was cleared to read the very material we received from the executive department.

Mr. MARSHALL. Mr. Murphy, are you willing to turn that material over to this committee?

Mr. MURPHY. Right.

Mr. MARSHALL. At this time I am going to ask a member of our staff if he will receive it for the committee.

I wish to assure the Congressman that this gentleman is cleared to receive these materials.

Mr. Murphy, prior to appearing at this hearing, you have received copies of House Resolutions 1042 and 1054?

Mr. MURPHY. Right.

Mr. MARSHALL. Rules of this committee, the investigative procedures adopted by this committee and a copy of Mr. Flynt's opening statement, have you not, sir?

Mr. MURPHY. That is correct.

Mr. MARSHALL. Do you have any further remarks that you wish to address to the committee or any written report that you wish to file with the committee, sir?

Mr. MURPHY. I have no written report as such. I do have a few remarks and some insight I think that may benefit the committee pursuant to its resolution and study, and that is as this committee was appointed by the Speaker of the House originally, with Lucien Nedzi as its chairman, I think the committee—I don't mean to be redundant and stop me if you heard it all before, but we ran into difficulty with Lucien Nedzi's appointment, that is the original members of the select committee.

I think from that date there were question marks concerning the committee, and whether or not it would be able to undertake the important study it was given.

With the appointment of Otis Pike, the committee took its task very seriously, and we worked very, very hard, gentlemen. I think that the committee has been much maligned. I remember we spent over a week or 10 days of a recess here, where we held hearings all day long and worked quite hard, and things were going along smoothly until what I consider strong personalities, and I think the personalities got into it instead of the issues.

The personalities, I would say, were Chairman Pike and the chief counsel for the CIA, Mr. Rogovin, and as I sat up there viewing what was taking place, it got more to a fencing duel about how much information we would receive, how we would receive it, how far we would have to go before they would give it up, with the threats and subpoenas for contempt citations before the House.

Then a strange thing happened. When we got our work assembled and we started writing our report, to me it was strange anyhow, all of a sudden we got ourselves into a position of rushing with the final draft of this report to get it out, with, I would say, an almost very severe burden on the staff, a tough burden on the Executive to comply and be able to review the draft and come in with some changes, and I thought it was working pretty well.

They came in with some suggestions and we adopted quite a few of them, although there was some give and take. I do think the final report is a fine report. I wish all the Members of Congress would have read it before we would have voted on it up there in that session.

There again there was this rush to go to the Rules Committee, this rush to get the report out before the House, and this rush to have the House vote on something they had never read, and I look back now and I think had we just been a little more patient and had the chairman slowed up a little bit and tried to get a little more of a consensus from the House, and maybe made the report available to the members to read before we voted on it, we might not have had all this that followed, all this sensationalism by the press, the leaks to the newspaper people, and the leak by newspaperman, Mr. Schorr, to the Village Voice.

I don't in my own mind, and I can be corrected on this because this is a subjective test, feel that there is anything in that report that jeopardizes our intelligence communities in any way. I think there was some material we received that would have jeopardized it had it been in the report as laid out as we received it, but I thought we conscientiously deleted some of those leads, intelligence figures from around the world would have glommed onto and any information they would have gleaned from the report I think we deleted that. I think it is a composite what we studied from the testimony we heard and documents we have read.

As I say there can be legitimate differences of opinion on that from member to member, but I certainly would not, my own personal feeling is that I believe in the CIA.

I think had the American public been able to read this report, all the abuse the CIA received would have been vitiated, because of the

three or four major so-called clandestine operations they were criticized for. These were not the CIA's undertakings. These were dictated by people that were politicians, so to speak, and some people who just were ordinary citizens were in on the planning, much to my amazement.

I think that the CIA resisted these. The testimony and the report showed that the CIA resisted some of these pressures, but was overruled, so a lot of the things the CIA was blamed for, a lot of the covert activities they were blamed for, were really dictated by the civilians that controlled them, and resisted by the CIA, and I think the American people should have been presented that picture.

I think we need a strong CIA. I think it was shown especially during the Vietnam war that the CIA's intelligence was much superior to the military's intelligence. We had some controversy over that. I don't mean that necessarily to downgrade the military.

I don't think we should repose all intelligence in any one agency. I think they tend to become too powerful then. I like checks and balances, the Defense, the CIA and other branches of intelligence.

I think had the report been made public, the American people might have had a different idea about what the CIA was involved in, and how they came to certain activities around the world they have been much maligned and criticized for.

I think another thing that happened that was outside the scope of the committee and the control of anybody in the executive or the committee, was the assassination in Greece of that CIA agent. I think that was the turning point where the American people, as a result of Watergate, wanted us to delve into things and get them apart and set them straight, just doing a 180-degree turnaround. They felt that somehow these hearings, both in the Senate and the House, might have contributed to that man being assassinated in Greece, and I think that was the turning point. I think even the press, in editorial support, started to change.

Then I think we started rushing in to getting this final report out, and I think in our rush, somehow this leak occurred. That is all I would have to say right now, except the classification of secret and top secret thing.

I think one of the byproducts of our investigation shows that there are some things that are secret that should be kept very confidential, and then there are things that are stamped secret, and I think what happened is over a period of time, as we studied these documents that poured over our desks, we would see secret labels, and eyes only classification on stuff that was very mundane, and I think we got to feel that somehow whoever was stamping these things or had that stamp was stamping everything.

If a crate of oranges came by, they would have stamped it top secret, and I think we ought to get into that sometime down the line.

Then I think there would be a proper respect for a label "eyes only" or "top secret." I think that respect has been eroded by the generous application of those stamps.

Mr. MARSHALL. Mr. Murphy, in the event that your evidence or testimony may involve any information or data concerning the executive sessions of the Select Committee on Intelligence, or classified information, or information which may tend to defame, degrade, or

incriminate any person, would you please advise the committee so that it may take appropriate and timely action under the Rules of the House of Representatives?

As I understood a portion of the statement you made to the committee, the initial draft of the Select Committee on Intelligence, that is the draft of January 19, 1976, was delivered to you personally?

Mr. MURPHY. Right.

Mr. MARSHALL. And that draft, as well as later changes to that draft, remained within your personal possession at all times?

Mr. MURPHY. At all times, right.

Mr. MARSHALL. And has since then?

Mr. MURPHY. Right.

Mr. MARSHALL. You indicated that one difficulty that the select committee had with seeing the classified material or sensitive material was kept secure was the rush toward the last-minute preparations of the report. Prior to that time, that is prior to distribution let's say of the January 19, 1976, draft, did you believe that the select committee as well as its staff had secure procedures for guarding classified information to prevent its being divulged to unauthorized persons?

Mr. MURPHY. In most respects yes, in some respects no. We would start a hearing like you gentlemen are conducting here today and we would have some secret information laid before us. The bells would ring for a vote. Some members carried it to and from answering their responsibility on the floor. Other members kept it here, and the staff would come out and pick it up. After that I don't know what happened to it because I would rush out that very door, go on over and vote and come back and then they would deliver it. Where it was in the interim, I believe it was right here in the room. I don't think our quarters were adequate downstairs.

A couple of times there was one particular item I was interested in regarding certain wiretaps in Illinois. I brought the Illinois Bell officials down and AT&T officials down, and I wanted to ask some questions down in the room downstairs. I was almost embarrassed for the Congress. We had a little cubicle. We had to stick eight people in, and I was half in the door and half out of the door asking the questions, and I don't think the staff had enough room.

Again you have to understand that with all the controversy over Nedzi, and then when Pike was reappointed, we just went helter-skelter into this thing, and I don't think that we paused and regrouped and did enough planning as far as staff was concerned.

I raised three or four times in session that I wished that I could have somebody from my staff checked by the CIA or the FBI, and get clearance so he or she could work with me, because the work and the reading were just overwhelming. To do a conscientious job plus my other duties in answering rollcalls on the House floor, and this almost impatient atmosphere in the committee to get done with this job, was a tremendous burden.

I would have loved more time. I would have loved to have had somebody working directly with me and the committee, but we didn't have that, and we didn't have the luxury.

There were not enough staff members of the Select Committee on Intelligence to give each member an assistant, so to speak, where you could have somebody keep your papers on your desk, and when you

would come back where you are as far as testimony is concerned, who was testifying, et cetera.

Mr. MARSHALL. This committee has heard evidence that although there was an indication in the media of leaks that were occurring during the course of the select committee's deliberations, and there were some indications in the media that some of those leaks came from the select committee, either members or staff or someone associated with the select committee, that no investigations were undertaken by the select committee or the staff in a formal sense to try to identify those leaks, although concern was expressed about those leaks among the staff and among the members.

Could you comment on that for us, sir, as to whether you had an adequate staff to undertake investigations or whether that was a matter of some concern to the committee?

Mr. MURPHY. I don't think we would have had enough to undertake any proper investigation of a Member or a member of the staff. We would take a break and the newspapers would swarm from these very seats on up to the Members, and they would ask maybe one Member five or six questions, then go on the other side and ask another Member five or six questions, and these newspaper people are very adept at taking a little bit from here and a little bit from there and pasting it together. They have other sources.

I think one of the problems with the Select Committee on Intelligence has to go back to the leadership of the House. When you appoint Members to a sensitive committee like the Select Committee on Intelligence, I think it is incumbent on the leadership of the House to make sure they appoint a type of Member that they have looked at over the years and can repose some faith in.

Now if you are going to take a Member and put him on the Select Committee on Intelligence that you have been reading every week in and week out some sensational statement by this Member since he has been in Congress, you know, it doesn't take a genius to realize that he is either in bed with the newspaper reporter or a group of newspaper reporters, or that they have a close association, and this is his style of campaigning, so to speak. He has to have his name in the paper all the time. It doesn't take a genius to figure this out, or how a Member's—what his feelings toward the CIA or intelligence or the military are in general.

We all know members here who would love to do away with the Intelligence Agency per se without any evidence. They want to reduce the military down to what I would consider an unsafe level. They may consider it a safe level. I think the responsibility with leadership as Speaker and majority leader, and on the minority side when you put members on a committee like this, it shouldn't be just because he is a member of a certain caucus or she is a female. This quota business just has to be put aside when you get into membership on such a sensitive committee.

This is just a personal observation of myself.

Mr. MARSHALL. You indicated that you felt there was nothing in the select committee's report which was harmful to the intelligence community. As a matter of fact, there were some things you thought would reflect favorably on the intelligence community.

Did you know of anything in the select committee's report which you thought would be harmful to the national security of the United States by divulging in public?

Mr. MURPHY. Yes; in the initial report there were a couple of items in there. For instance, the specific amounts of money from an intelligence budget spent in a certain area I thought we should delete, because I think it would then tend to show somebody that had adverse interests to our country, where we were concentrating our efforts in a certain branch or field of intelligence.

I don't think the fact of how many million we were spending in that particular area was of that much significance, just the fact that we were working in that area.

Mr. MARSHALL. Were those deleted from the final report?

Mr. MURPHY. Yes; they were deleted, and there were a couple of other things, motions of different members. I had a couple of motions myself where I deleted certain information from the original draft as I read it, after I read it.

I said in my own opinion, my own judgment, there were some things in there that should not have been in it. In other words, if I was an intelligence agent for a foreign country, I think I could have picked up on something that would have led me to where the United States was heading or where they were concentrating their intelligence efforts.

I don't think it added anything to the report. I think what the American people wanted to know is were we getting a dollar's worth, for every dollar we spent, were we getting an adequate dollar of return back, and were the basic constitutional rights of American citizens being violated? I think this is what our charge was.

Mr. MARSHALL. Was that true of the final report, that there were bits of classified information there?

Mr. MURPHY. I don't think an experienced intelligence agent would have been presented with any new material by it.

Mr. FLYNT. Could I ask a question?

What about confirming material? You say you differentiate between new and old, but what about information which they may have had but had not previously confirmed?

Mr. MURPHY. Mr. Chairman, in my own opinion there was none.

Now as I say, honest people can have legitimate differences of opinion on it. I must acknowledge that this was my first encounter with sensitive material. I may not be the proper judge of it, but I thought that in an open country and democracy that we live in, that we have to pay a little bit of this price to keep it open, and I think we are strong enough to do it.

I think the overriding concern there was were the constitutional rights of certain Americans being violated in the name of intelligence and national security, and I think history has proven that there were some things done in the name of national security that really in fact had nothing to do with national security. That was the constant criteria I had before me all the time when I made my judgments on these things.

Mr. MARSHALL. Mr. Murphy, Mr. Daniel Schorr has stated in an article in the Rolling Stone dated April 8, 1976, that he had posses-

sion of the select committee report or a draft of the select committee report of January 25, 1976.

Did you give this report or a draft of the report or the text from either the final report or a draft to Mr. Schorr or to any other person?

Mr. MURPHY. I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. MURPHY. I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or a draft of the report or any part of either?

Mr. MURPHY. I have some general information that I have talked to other members about, about I think it was the final day when Rogovin, Searle Field, and the chairman were down, when they assembled the final report.

As I understand the facts, one was given to the CIA, one was given to the chairman, and I think then some Xeroxing was done after that. The information I have, the Xeroxing was done in the executive branch for what they thought would be properly interested parties.

Mr. MARSHALL. This is distribution within the executive branch?

Mr. MURPHY. Then Bob Giaimo stopped me on the floor one day and told me about a call he got from a certain ambassador about a line of questioning that I undertook in an executive session regarding—I had better not go into this right now, but it was regarding some funds that went to certain people in a foreign country, and I questioned, I think it was, the Director of the CIA very closely on this.

I think they carried my questioning. He read it, called Giaimo concerning my questioning, and how harmful it would be if this got out.

I was very surprised to hear that, that he across the seas found out about my questioning in executive session, and was wondering whether or not I was going to make a point of this or not.

Mr. MARSHALL. Were you ever able to trace what the source of his information was?

Mr. MURPHY. No, sir, I wasn't. I never talked to the man myself directly.

Mr. MARSHALL. Other than what you have already testified to, do you have any knowledge whatsoever of circumstances surrounding the publication of the select committee's report or the draft of the report or the text of the draft or the report?

Mr. MURPHY. No, sir, I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. MURPHY. No; I don't believe so. I think only Mr. Schorr might have that.

Mr. MARSHALL. Did you give the select committee's report or make any part of the select committee's report or a draft of that report or text from the report or from a draft available to anyone outside of the Select Committee on Intelligence?

Mr. MURPHY. No, sir, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. MURPHY. No, sir.

Mr. MARSHALL. No further questions.

Mr. BENNETT. Mr. Flynt?

Mr. FLYNT. No questions.

Mr. BENNETT. Mr. Spence?

Mr. SPENCE. I don't have any questions.

Mr. BENNETT. Mr. Price?

Mr. PRICE. No questions.

Mr. BENNETT. Mr. Quillen?

Mr. QUILLEN. Nothing other than to say it is an honor to have you here, Mr. Murphy. I think one statement that you made certainly rings crystal clear with me. That is the appointment of the members of any select committee, particularly an intelligence committee, that that should be done with great consideration as to the individual involved and to the purpose of the study involved. I think you stated that so well.

Mr. MURPHY. It is a leadership responsibility, Mr. Quillen, and it is a tough decision to make. I don't mean to presume here that I am better than certain other Members of Congress or I know who would be a legitimate worker around here and represent his constituents and the American public, but from our experience here in the Congress, we know of certain individuals in their likes and dislikes, in their philosophies, and I think all this has to be taken into consideration, because we are dealing with a very, very sensitive subject.

I happen to believe in a strong CIA. I happen to believe that I think the President made a mistake in losing Mr. Colby. I think he was a fine man. He was a tough adversary. I think our investigation got off the track between personality conflicts with the chairman and the counsel for the CIA.

I think that we got into a fencing contest as I viewed it, and we kind of lost sight of really where we were heading.

Now I think that maybe the President or somebody representing him should have sat down with the committees and had a roundtable discussion about what we needed, where we were headed, what really was our purpose. I think some of this could have been avoided.

I don't necessarily think that we always have to be at each other's throats with regard to this intelligence. I think our goals are the same. It seems to be always a political contest, and I wish it could be something other than that.

Mr. BENNETT. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

You voted with the majority to release the report?

Mr. MURPHY. Yes, I did.

Mr. MITCHELL. I don't have any questions.

I would just like to commend the gentleman on his balanced approach to the work of the committee. It has been a refreshing analysis, a thoughtful analysis of the difficulties that developed.

It is confusing to us to sit here and hear people who are strongly partisan on both sides, and you seem to have some middle ground.

The fact that you suggested that there were the time constraints, there was a very big rush apparently to meet a deadline, and then the personality clashes and then the composition of the committee, I feel you have made a contribution.

Thank you very much.

Mr. MURPHY. Thank you.

Mr. BENNETT. Any further questions?

Mr. Flynt?

Mr. FLYNT. I would like to also say that I am grateful to the gentleman from Illinois, our distinguished colleague, for his appearance here today and for what he has told us.

I want to take this opportunity to publicly express my appreciation to him for the cooperation, the unfailing cooperation which he has given to this committee, committee staff and to me since the day that the House passed the resolution which gave us the charge to inquire into this matter, and I am deeply grateful.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. BENNETT. Since we now have a vote, I would assume we would now all go over and cast a vote and come right back.

Is there any objection to that?

Mr. MURPHY. Am I excused, Mr. Chairman?

Mr. BENNETT. We appreciate it very much. You have made a fine presentation. You are released and we will now recess until we return from the vote.

[Short recess.]

Mr. FLYNT. The committee will come to order.

We will resume hearings.

The committee is in open session.

A quorum is present for the purpose of taking testimony and receiving evidence.

Our witness at this time is our distinguished colleague from Ohio, Mr. James V. Stanton.

Mr. Stanton, we welcome you before the committee.

We are particularly glad that you are able to be with us, because we understand that you were hospitalized for a few days. We hope that you are recovering satisfactorily.

Mr. STANTON. Doing fine, Mr. Chairman.

Mr. FLYNT. We are all glad to have you with us and we thank you for the cooperation which you have heretofore given this committee.

Will you rise and be sworn?

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STANTON. I do.

TESTIMONY OF HON. JAMES V. STANTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Mr. Stanton, would you give us your full name and identify yourself for the record?

Mr. STANTON. James V. Stanton. I represent the 20th Congressional District in Cleveland, Ohio.

Mr. MARSHALL. You are, of course, appearing at the invitation of the committee; is that correct?

Mr. STANTON. That is correct.

Mr. MARSHALL. Prior to the hearing, you received copies of H. Res. 1042 and 1054?

Mr. STANTON. Right. I understand the mandate of the resolution and I understand the statement of the chairman as he made it preliminary to these hearings.

Mr. MARSHALL. And you have also received copies of the rules of this committee and the investigative procedures adopted by this committee?

Mr. STANTON. That is correct.

Mr. MARSHALL. Do you have a written statement which you wish to file with the committee at this time?

Mr. STANTON. No. I cooperated with the investigative staff of this committee, related all the knowledge that I have in relation to the report and to the mandate by this committee regarding the alleged publication of the transcript by Mr. Schorr.

Mr. MARSHALL. Do you have any oral statement which you wish to make to the committee at this time?

Mr. STANTON. No.

Mr. MARSHALL. And have you turned over to the committee or to the staff all the documents in your possession relating to the work of the select committee?

Mr. STANTON. I have turned over all information that I had, having originally received the report some 4 or 5 days after it was attempted to be delivered to my office. I accepted it here in the committee hearing, and as I indicated to the staff people, kept the report with me in my office and locked there until it was returned to your staff people, and except for one occasion when I had one of my staff members check the report for purposes of determining statements that I made publicly, why I had it totally in my possession.

Mr. MARSHALL. In the event that your evidence or testimony may involve information which concerns the executive sessions of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, would you please advise this committee so that it can take timely and appropriate action under the Rules of the House of Representatives?

Mr. STANTON. Yes, I will.

Mr. MARSHALL. Mr. Stanton, as I understand your opening remarks, the draft of January 19, 1976, of the select committee report as well as all changes to that draft remained in your personal possession except for one instance when a staff member of yours was requested to perform a task with regard to it; is that right?

Mr. STANTON. That is correct.

Mr. MARSHALL. What was the name of the staff member?

Mr. STANTON. Frank Murray. He is my legislative assistant.

Mr. MARSHALL. Do you recall when the draft was turned over to Mr. Murray?

Mr. STANTON. The original report was tendered to me on the 19th. I was in Ohio and I picked it up the following Thursday, and it might have been on Friday of that week.

Mr. MARSHALL. Following Thursday was the 22d.

Mr. STANTON. So it probably was on the 23d when he checked the information that I requested. It was to check remarks that I had made in regard to Secretary Kissinger, and to make sure that my public statements related to the publication of the report.

Mr. MARSHALL. How long did Mr. Murray have the report; do you know?

Mr. STANTON. One day.

Mr. MARSHALL. Is Mr. Murray still a member of your staff?

Mr. STANTON. Yes.

Mr. MARSHALL. The draft that Mr. Murray had was the draft of January 19, 1976?

Mr. STANTON. It was the draft that was tendered on the 19th, and I picked up on the following Thursday at the committee meeting here.

Mr. MARSHALL. Do you know if any changes had been made in that draft of January 19?

Mr. STANTON. Not to my knowledge. The inserts as best I can recollect were put into the book when I came here on the following Thursday following the 19th.

Mr. MARSHALL. But the draft that Mr. Murray had did have the changes in it; is that right?

Mr. STANTON. Yes.

Mr. MARSHALL. Did Mr. Murray return that draft?

Mr. STANTON. To me personally and I kept it locked in my safe.

Mr. MARSHALL. Until such time as you turned it over to the committee staff?

Mr. STANTON. That is correct.

Mr. MARSHALL. Mr. Stanton, did you have an occasion to talk with Mr. Daniel Schorr following Mr. Schorr's television show of January 28, 1976, when he exhibited what appeared to be a draft of the select committee report on national television?

Mr. STANTON. I talked to Mr. Schorr on one occasion in the Speaker's lobby in regard to the report, and Mr. Schorr indicated on that occasion that he had received the report from the CIA, and he volunteered that to me, and I indicated to him surprise, and he said "Of course I would deny that if anybody ever asked me."

I said—frankly I didn't ask him, didn't inquire. He made a voluntary statement to me, and that is the only remark that I had ever heard from him on the subject.

Mr. MARSHALL. When was that conversation, if you can place it?

Mr. STANTON. It might have been a week after the publication of the report.

Mr. MARSHALL. The information I had prior to the hearing, as you had related the conversation, was that Mr. Schorr had received the report from the committee. Is that incorrect? Mr. Schorr said he had received it from the CIA?

Mr. STANTON. He said he received it from the CIA. Yes; that is the information that I received. I really didn't know whether he was serious or not serious. He had made it as I was passing through the Speaker's lobby, and obviously I didn't give it much credence, because anybody who would make a statement like that, and then say that obviously if it were reported he would deny it, you know, it is something between Mr. Schorr and myself, and obviously it is his word versus mine, and I don't know whether to put any credence into what he said or not.

Mr. MARSHALL. Did you inquire as to who in the CIA?

Mr. STANTON. No; I had no interest.

Mr. MARSHALL. Did Mr. Schorr say anything else during that conversation?

Mr. STANTON. No.

Mr. MARSHALL. About the report or the source of information?

Mr. STANTON. No.

MR. MARSHALL. Have you had any subsequent or later conversations with Mr. Schorr concerning the select committee's report?

MR. STANTON. No.

MR. MARSHALL. Was there anyone else present during this conversation, Mr. Stanton?

MR. STANTON. No.

MR. MARSHALL. What was the occasion for the conversation? Did Mr. Schorr simply approach you or you approach him?

MR. STANTON. Well, in the normal course of walking in and out of the Speaker's lobby, reporters always have conversation with members who are dealing on the subject matter which they are covering, and this just happened to be a rather casual remark that was made on a subject that was in publication and of notoriety at that particular time.

MR. MARSHALL. You said you thought it was within a week after?

MR. STANTON. Within that framework, yes.

MR. MARSHALL. Could you place it any closer in time?

MR. STANTON. No.

MR. MARSHALL. This committee has heard testimony concerning leaks of information during the select committee's deliberations. It has further heard testimony that no formal investigation was initiated by the select committee to try to identify the source of those leaks.

Would you comment on that, sir, if you have some comment that you wish to make?

MR. STANTON. I think it would have been impossible under the staff operation to conduct an investigation. There were obviously, as Congressman Murphy testified, people who were leaking information, either staff people or members of the committee, for their own purposes, and sometimes members of the administration, and it became the normal Washington game of who leaked what, and who could accuse what of leaking.

I think to that degree we experienced enough to know what it is, that an investigation of that nature would have taken the committee down a road that they would have never gotten off of.

MR. MARSHALL. At the time the select committee report was adopted on January 23, 1976, was it your understanding that the select committee report, as adopted, was going to be made public?

MR. STANTON. Yes.

MR. MARSHALL. Was that based upon the actual vote of the committee in adopting it, or was it based simply upon an understanding that you felt pervaded the committee?

MR. STANTON. I think it was based upon an understanding, and the fact that the majority had adopted the report, and the majority felt that there was nothing harmful to the interests of the United States.

MR. MARSHALL. Was that your opinion as well?

MR. STANTON. Yes; it was.

MR. MARSHALL. In your judgment, did the report as adopted, or the January 19 draft, contain classified information?

MR. STANTON. I think that by the time it was adopted, I didn't feel it did on the 19th, have information, classified information, but there was a series of votes that eliminated certain information, and certainly the final draft didn't have any information that one could debate as to being classified, in my judgment.

Mr. MARSHALL. Mr. Stanton, Daniel Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give the select committee's report or a draft of the report or any portion of the text of the select committee's report or draft to Mr. Schorr or to any other person?

Mr. STANTON. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. STANTON. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or the draft of that report or any portion of the text?

Mr. STANTON. No, just the information that I indicated earlier.

Mr. MARSHALL. Do you know of anyone who has such knowledge other than the information that you have already given in testimony?

Mr. STANTON. No.

Mr. MARSHALL. Did you give the report or make any part of the report available to anyone outside of the Select Committee on Intelligence?

Mr. STANTON. No.

Mr. MARSHALL. Did you make any portion of the draft of the report or text of the report available to anyone outside of the Select Committee on Intelligence?

Mr. STANTON. Just in regard to my staff person to check information, as I indicated in my testimony.

Mr. MARSHALL. Do you know of anyone who did?

Mr. STANTON. No.

Mr. MARSHALL. Those are all the questions I have.

Mr. FLYNT. Mr. Stanton, you do have the statement of Mr. Schorr himself, and I want to be sure to repeat what you said.

Mr. Schorr told you in the Speaker's lobby of the House of Representatives that he got it from the CIA?

Mr. STANTON. That is what he said.

Mr. FLYNT. Did he elaborate as to from whom in the CIA he got it?

Mr. STANTON. He did not.

Mr. FLYNT. Did he indicate how and at what time he had received it?

Mr. STANTON. He did not.

Mr. FLYNT. Do you recall the date upon which he told you this?

Mr. STANTON. Except within the framework that I have already responded, to the counsel, approximately a week after the publication.

Mr. FLYNT. Approximately a week after the publication?

Mr. STANTON. That is correct.

Mr. FLYNT. In the Village Voice?

Mr. STANTON. That is correct.

No, from the time that I recall seeing it flashed on television, in which he flashed the document on television.

Mr. FLYNT. About a week after that.

Mr. STANTON. That is correct.

Mr. FLYNT. Oh, yes, not a week after it appeared in the Village Voice?

Mr. STANTON. That is correct.

Mr. FLYNT. Was the House in session on the day that he told you this?

Mr. STANTON. Yes.

Mr. FLYNT. Did you ask him any clarifying questions about the circumstances under which he got it?

Mr. STANTON. No.

Mr. FLYNT. Have you ever discussed it with him since?

Mr. STANTON. No.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions, Mr. Chairman.

Mr. FLYNT. Mr. Stanton, we thank you for your appearance before the committee and for the cooperation which you have given to the committee and the committee staff throughout the time that this matter has been within the jurisdiction of this committee.

I repeat that we welcome you before the committee, and we are glad that you were able to appear in person rather than for us to have to go to you in the hospital. We wish you good health.

Mr. STANTON. Thank you for your kindness. Thank you.

Mr. FLYNT. Thank you for your help.

Mr. Kasten.

The next witness before the committee is our distinguished colleague from the State of Wisconsin, Mr. Robert Kasten.

Mr. Kasten, we welcome you before the committee, and we request that you take the oath.

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KASTEN. I do.

TESTIMONY OF HON. ROBERT W. KASTEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. FLYNT. You are Robert Kasten?

Mr. KASTEN. My name is Robert W. Kasten, Jr., Representative in Congress of the Ninth Congressional District from the State of Wisconsin.

Mr. FLYNT. Mr. Marshall has some questions.

Mr. MARSHALL. Mr. Kasten, you are of course appearing at the invitation of this committee?

Mr. KASTEN. I am.

Mr. MARSHALL. Prior to this hearing, you received copies of House Resolutions 1042 and 1054, the rules of this committee, the investigative procedures adopted by this committee as well as Chairman Flynt's opening statement?

Mr. KASTEN. I have.

Mr. MARSHALL. Do you have a written statement which you wish to file with the committee at this time, sir?

Mr. KASTEN. I do not.

Mr. MARSHALL. Do you have an oral statement you would like to present to the committee?

Mr. KASTEN. I do not.

Mr. MARSHALL. Have you turned over to this committee or its staff any documents in your possession relating to the work of the Select Committee on Intelligence?

Mr. KASTEN. I have.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence, or classified information, or information which may tend to defame, degrade, or incriminate any person, please bring that to this committee's attention so that it may take timely and appropriate action under the Rules of the House of Representatives.

Mr. KASTEN. Yes.

Mr. MARSHALL. Mr. Kasten, could you give us your evaluation of security procedures and the adherence to security procedures by the Select Committee on Intelligence during the course of its deliberations and work?

Mr. KASTEN. I think that the security procedures were not adequate to the task before the committee, and from time to time during the committee deliberations, a number of us expressed that concern.

The pages of most of the reports and drafts that we received were not numbered. From time to time there were three or four pages all with the same number but with different text. I was concerned about this, and I think certainly more than one brought my concern to the attention of the chairman of the committee, to the ranking member, Mr. McClory, and also the staff director, Mr. Searle Field.

Mr. MARSHALL. Was any action taken on these matters brought to their attention?

Mr. KASTEN. I cannot recall any specific changes that were made during the process. I know that in conversations that I had with Mr. Searle Field he said from time to time "We are trying to be more careful" or "Because of the problems that we got in terms of providing all of this information to all of the members, under the time constraints, we are doing the best we can," that kind of a thing.

I don't believe it was any kind of a conspiracy to be sloppy, or that they were intending to make it difficult for adequate security to prevail, but there was a feeling, especially toward the end of the committee work, we were working under deadlines, the authority of the committee was about to expire, there were problems that were occurring, and I think that everyone was just trying to get the thing done.

As a result I think the security precautions and the classification in particular was sloppy.

I feel a little bit unqualified to answer these questions more specifically, because I am not a member of the Armed Services Committee, and I am not aware of the precautions and of the security arrangements that other committees of Congress have adopted, but I just, in my own just common sense, told me that I just didn't feel that our security was accurate.

Mr. MARSHALL. You received the initial draft of the select committee's report, the draft of January 19, 1976?

Mr. KASTEN. Yes, I did.

Mr. MARSHALL. Was that delivered to you personally?

Mr. KASTEN. It was delivered to my office on, I think it was, Monday afternoon.

Mr. MARSHALL. And was it delivered to you personally or simply left in your office?

Mr. KASTEN. I believe it was delivered to me personally by Emily.

Mr. MARSHALL. Ms. Sheketoff?

Mr. KASTEN. Yes.

Mr. MARSHALL. What about changes to the select committee's draft of January 19? Were they delivered to you personally?

Mr. KASTEN. Changes of the draft were either delivered to me personally or were provided to me in the committee. Occasionally they would provide changes to Members of the committee, and they were put at the desks. I don't recall receiving any information that came through one of my staff people. It is possible that that could have happened. It could have been dropped off at a front desk in our office, and given to me, but to the best of my memory, that did not occur.

Mr. MARSHALL. What did you do with your draft of January 19, and any changes that were distributed to you personally? Were they kept in your personal possession?

Mr. KASTEN. The committee report and all of the other documents we had were kept by me, personally, in the safe in my office.

Mr. MARSHALL. Did you at any time seek to obtain a copy of the select committee's report with changes for the executive branch?

Mr. KASTEN. On the 23d, which was Friday, I made a number of motions. I think it was 2 or 3 hours' worth of motions, in trying to respond to the objections which the CIA, the State Department, the executive branch, had raised to the initial draft, to the draft of the 19th.

The CIA had been given a copy of that draft, I believe from the committee, and they went through and pulled certain objections. Primarily, they were areas that concerned violations they thought would reveal sources and methods of intelligence gathering, if that material came into the hands of our enemy.

There were a few editorial changes and differences of opinion as well. On the night of the 22d I worked with committee staff and with representatives of the CIA, and on the morning of the 23d made a number of changes. We were successful in about 10 percent of my motions, and we lost on about 90 percent of my motions.

I think you are going to come back to the question later, as to whether I think that the report contained security problems. I think it did.

Now on the afternoon of the 23d, we completed the set of motions that I made, and adopted the report. I voted against that but the majority of the committee voted to adopt the report.

On the morning of the 24th, I received a call from Mitch Rogovin, and he told me—he asked me whether or not I could help him obtain a copy of the final report, and I told him I thought that this was wrong, that they hadn't been given a copy of the final report.

I then called Emily Sheketoff and I also tried to call Searle Field, and I said it was not my understanding that we were going to prevent the CIA from seeing the final report.

On the 24th I called Searle. I called Mr. Field and I said that I thought it was important that the CIA know which changes from the motions that I made on the 23d had been accepted, and how the changes were made, so that they could respond to the report in the final version.

Searle Field told me that the chairman had instructed him not to provide the report to anyone, except for the members of the committee, that he was following the chairman's request, and essentially that now

that the work of the committee was over, the CIA no longer should have veto power over what we do. We have given them their day in court, so to speak, and now the committee report is the property of the Congress, not of the executive branch, so on the morning of the 24th I asked Searle and Emily to provide a report to the CIA. They did not do that.

Mr. MARSHALL. Did you leave the matter there, or did you take any further action with regard to seeing that the CIA obtained a copy?

Mr. KASTEN. I left the matter there. I was disappointed, but I felt that it was no longer anything that I could deal with.

Mr. MARSHALL. This committee has heard testimony that Mr. Aspin provided the CIA or the executive branch with a copy of the select committee's report.

Did you have any conversation with Mr. Aspin at all about this matter?

Mr. KASTEN. I had conversations with Mr. Aspin, you know, throughout the work of the committee, but to the best of my knowledge, I didn't talk with him about this. I didn't talk with him on the 24th, and we never discussed in any way him providing a copy to the CIA or to the administration. I was just flabbergasted when I read in the newspaper an account of your hearing that he had provided the report to the CIA. I think that that is a breach of security that is just as serious as any of the other ones, and more importantly, it gives credibility to the people who are saying that the administration leaked the report.

I, myself, don't believe that the CIA or the administration leaked the report. I tend to think it came from the legislative side, from the committee side, but the fact that that report was leaked, that copies were made, or evidently copies were made, unfortunately gives credibility to those that say that the CIA leaked the report themselves, so I think it is wrong, I think it is unacceptable, and I would hope that your committee will take action as to that particular leak.

Mr. MARSHALL. Do you have any basis for your belief?

You state you tend to think that the report came or was leaked from the legislative rather than from the executive branch. Obviously we have all heard a great deal of evidence on that point, but do you have any basis that you can share with this committee for your belief, other than simply a judgment arrived at as to where the leak came from?

Mr. KASTEN. I don't have any factual basis. It is a judgment. I just don't see much benefit to the CIA or to the administration leaking the information. As Mr. Stanton alluded to in remarks immediately preceding mine, there were some people on that committee who from time to time thought evidently that it was to their own personal benefit to reveal classified or sensitive information. I just don't see that there is any motives for the administration to leak this information. Much of the information is things that they had in their possession for months if not years.

Mr. MARSHALL. Have you had occasion to look at the Village Voice editions of February 16 and February 23?

Mr. KASTEN. I have not looked at the editions.

Mr. MARSHALL. You testified earlier that you thought the select committee's report as adopted on January 23, 1976, contained classified information.

Mr. KASTEN. Yes.

Mr. MARSHALL. Could you elaborate on that for us?

Mr. KASTEN. I think that this is very important, and I disagree strongly with statements that I have heard other committee members make saying "I knew that this information would not reveal sources and methods of intelligence gathering." It seems to me that none of us on the committee were in the position to make that judgment. It seems to me that only people who have worked in intelligence and intelligence gathering over the years are in the position to know how these puzzles fit together.

There were a number of examples where Mr. Colby or other representatives of the CIA would come before us and point out that this fact doesn't seem very sensitive, but if you put that fact, let's say that date or that country, in the whole scheme of things that the foreign intelligence community keeps developing, that one fact might be the last piece in the puzzle, and by doing that they can identify a source. They could identify an agent, because of a date, a time, and a place.

I always felt that we were not in the position of making those close calls, those judgments, and I also felt that where there was a matter of doubt, in other words, where the CIA or the State Department, came before us and said "This is a security problem, this bit of information could possibly reveal a source or a method of intelligence gathering," I kind of felt that it was more responsible, if there was a doubt, to go with the people that were the experts, rather than with the people that were the politicians.

Mr. MARSHALL. This committee has heard testimony that with regard to the January 23, 1976, draft, the CIA and the other departments in the executive branch presented its objections to that particular draft, and classified information in that draft, at a meeting late in the evening of January 22 and extending into the morning of January 23.

So far as the testimony here is concerned, there is no evidence that members of the executive branch had an opportunity to meet directly with committee members to present those objections; is that correct, sir?

Mr. KASTEN. Members of the executive branch and the CIA met with me on the evening of the 22d in the staff office downstairs, in other words, in the Select Committee on Intelligence offices. We sat down. I believe that Mr. Field and Mr. Donner were there. I think that Mr. Boos was there also, and there was a representative of the CIA and I believe a representative of the State Department there for part of the time.

I was at that meeting for probably more than an hour and less than two, I can't remember exactly, and the purpose there was I had asked earlier in the week of the chairman if we were going to deal with the objections which had been raised by the CIA and the State Department. They came in with probably 2 or 3 inches of sheets of paper listing various objections by line in the report.

Mr. MARSHALL. When you say "they," you mean the executive branch?

Mr. KASTEN. The executive branch, primarily the CIA, but they had State Department objections, CIA objections, and possibly OMB and a couple of other branches had put in their objections.

What they had done is reviewed the draft and gone through and circled the areas that they thought were possible security problems.

I wanted an opportunity to take all of those out, or at least for the committee to vote up or down on those objections which had been raised primarily by the CIA. I was told on probably the 20th or the 21st in the committee meeting that a lot of these we can work out. This is Mr. Field and Mr. Donner. A lot of these are things that we can work out, and it seemed more sensible to have them sit down with the people who objected, work out the areas that weren't crucial to the report, and were being objected to by the administration, and then we would have fewer motions to vote on, on Thursday or Friday, whenever we voted on the ones that we couldn't, if you will, work out, and they did that, and we did work out a number of them.

On the morning of the 23d, I made, as I said, about 2 or 3 hours of motions. Those motions were the objections that had been raised because of national security reasons by the CIA, which had not been agreed to by the committee staff working with the administration and the CIA on the 21st and the night of the 22d and the morning of the 23d, so we had a remainder of areas which the CIA said were violations of security, and which the committee said were absolutely critical to the report.

Those areas, that set of motions, was made on the 23d, and I would guess that the committee agreed to 10 percent of them and disagreed to about 90 percent of them.

I provided your investigators with my notes from that morning's meeting, because I felt possibly the motions that had passed and the motions that hadn't passed could help you try to determine where in time the report that was published came from the committee.

Now that morning, the morning of the 23d, I think was the worst example of a disorganized—the best example of disorganization in the committee. On that morning many times, and we can go back and look at the record. It was a closed meeting. I would say "We have an objection on page 289, paragraph 5." The people would go to their page 289, and more than once we had two and sometimes three page 289's in this draft that we were trying to work from, and staff member would come up and say "No, here is the new page 289," and put it on the table. Then you would have two of them before you here. That occurred more than 10 times that morning, with two and three pages numbered exactly the same way, with different copy on them.

It is I think the best example of the timeliness problem that the staff was fighting, and the lack of business-like procedures on the part of the committee.

Mr. MARSHALL. With regard to the handling of classified information, you made the point earlier that your experience in Congress had not been such to put you on committees that in a usual way you had to deal with the problem of securing classified information.

In your judgment, did you think that the staff of the select committee had a background in classified information or a competence in handling classified information?

Mr. KASTEN. No.

Mr. MARSHALL. Do you wish to elaborate on that?

Mr. KASTEN. That is just my judgment, and I feel again that I am not an expert. My judgment is that the staff overall, some of them worked on the Watergate hearings, a number of them had worked—I think that Mr. Boos worked at one point in the Armed Services Committee on the Intelligence Subcommittee with Mr. Nedzi, but the

staff overall I don't think had any more experience than I did on the subject of classification and securing sensitive and secret information.

Mr. MARSHALL. Did you ever witness any members of the media within the select committee spaces?

Mr. KASTEN. No.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Did you give the select committee's report or a draft of the report or any portion of the text of the draft or the report to Mr. Schorr or to any other person?

Mr. KASTEN. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. KASTEN. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee's report or any part of that report or a draft of the report or any portion of the text of the draft?

Mr. KASTEN. No.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. KASTEN. No.

Mr. MARSHALL. Did you give the report or make any part of the report available to anyone outside of the Select Committee on Intelligence?

Mr. KASTEN. No.

Mr. MARSHALL. Did you make any portion of a draft of the select committee's report or any text from a draft available to anyone outside of the Select Committee on Intelligence?

Mr. KASTEN. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. KASTEN. No.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

I think it is highly important that we insure that Congress does have an oversight function as far as the intelligence agencies are concerned down the road. We may want another committee some time to serve the function that this one is addressing itself to.

It is interesting to sit here day after day and hear all the problems that did arise, to hear dedicated young people who were staffers talk about all the hard work they did.

Mr. Murphy, just before Mr. Stanton testified to the fact that there were three major problems as he said it, or this effort which had started out apparently so well went so far awry, he suggested there was a severe time constraint. You alluded to this also, due to the fact that you were pushing to meet a deadline.

I also mentioned that there were severe personality clashes. There were severe personality problems between the chairman and Mr. Rogovin. He suggested a third problem was the composition of the committee. He thought it was a poor composition to serve the function that this committee was trying to perform.

My question is this, Mr. Kasten: Do you agree with his descrip-

tion of the difficulties that arose, and do you have any others that you would like to add for the record that might help us down the road, in case we want to take this trip again?

Mr. KASTEN. I agree in general with all three points. The time problem was one imposed by Congress. The idea was that we wanted to get into this. Essentially we were initially set up to review the illegal domestic activities of the CIA. That scope got much, much bigger. I think the fact that this was an issue that many people thought was going to put their name in the headlines is what got it bigger, and the fact that we had competition between the Senate and the House created this problem.

In my opinion a Select Committee on Intelligence made up of Members of the House and the Senate, a joint committee, would have reduced the competition, would have reduced the headline hunting, would have saved taxpayer dollars, and would have been a more businesslike, deliberate committee exercise.

We ended up essentially with a race between three groups, the Senate, the House, and the administration with the Rockefeller Commission. I can understand how maybe there should be one in the administration, but I think having two in the House is wrong.

The composition of the committee, it was clear there were some members of the committee that had a very strong interest over the years, in terms of their concern about the rights of the military and of the Intelligence Agency as opposed to the rights of American citizens. I think that there were a lot of people on the committee that had pretty much had their minds made up before they began, and I think that the composition of the committee could have been more balanced, not necessarily between Republicans and Democrats, although that would have helped. I think, to set it even.

It could have been more balanced in terms of ideological points of view and backgrounds.

The atmosphere became an adversary relationship early on. The committee, or at least the majority of the committee, was no longer working with the executive branch. It was an adversary kind of a relationship that was set up. It was clear that the staff particularly was taking a personal interest in getting these points, in getting at somebody.

Now in the beginning we started off on an even keel, and I think that that adversary relationship developed—you can never start a fight with just one person—that relationship developed in part because of an attitude which the administration took in the beginning. It helped to set the stage, and if the administration had been a little bit more helpful in the beginning, I think that we would have been able to avoid that kind of a standoff confrontation which we came to time and time and time again, and which contributed to this adversary kind of a relationship that I think wasn't good for congressional oversight, and it certainly wasn't good for the U.S. intelligence community, and it certainly wasn't good for the administration.

Mr. MITCHELL. Thank you, Mr. Kasten.

Mr. KASTEN. Mr. Chairman, a lot of people have said that we should stop all this, that we shouldn't have this investigation, that everybody should just leave. I think it is important, and I just want to say that it is not the Congress of the United States of America that has shown

that we have loose security. It is the Select Committee on Intelligence. It is not the Congress of the United States of America that chose to unilaterally declassify information. It is one small group, the Select Committee on Intelligence, and they didn't even do this by a unanimous vote. It is not the Congress that voted to publish the report. In fact, the Congress voted not to publish the report.

There are some of us on the minority of the committee that voted not to publish the report too.

Third and lastly: We have committees right now in the Congress, the Appropriations Committee, the Armed Services Committee, other committees that have been working with this kind of information for years, and have shown that they can have the proper procedures, they can have the proper security requirements. We have shown that we as a Congress can do it. It is the Select Committee on Intelligence that showed that it couldn't, and it is my hope that not only will you and your committee continue to pursue this investigation, because you represent in my opinion the Congress. You represent those of us who voted not to publish the material, but now those of us that are concerned about finding out where these mistakes were made.

Just as Mr. Mitchell said, we have got a responsibility to oversee these agencies, but there is kind of a broad brush that is floating around in the media these days saying the Congress can't keep secrets. The Select Committee on Intelligence couldn't keep secrets, that one group of 13 people, but that is not necessarily the Congress, and I think it is your responsibility and it is clearly a heavy one, to find out where the problem is with this group of 13 people, and the staff, so that once again we can be proud that the Congress can exercise, and I think all of us agree is helpful and necessary in our system of checks and balances.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Bennett?

Mr. Mitchell?

Mr. KASTEN, we are grateful to you for your appearance before the committee and for the very valuable contributions which you made to our hearings, and with the thanks of the committee, you are excused.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. FLYNT. Let me add as a precautionary measure that in the event we should need to recall you for any purpose, we will try to do it at a time mutually convenient.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. FLYNT. At this time I am going to ask the committee's indulgence so that we may have one additional witness. We have been informed that this witness has an airplane to catch at 2:25. We do not anticipate that his testimony will take a great period of time.

With the committee's indulgence the committee will call Mr. Aaron Donner.

Am I correct that you do want to try to catch a plane?

Mr. DONNER. You are correct, sir.

Mr. FLYNT. Mr. Donner, would you raise your hand, please?

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DONNER. I do, sir.

**TESTIMONY OF AARON B. DONNER, FORMER COUNSEL, SELECT
COMMITTEE ON INTELLIGENCE**

Mr. FLYNT. You may be seated.

Mr. Marshall will ask questions.

Mr. DONNER. I just want to express my gratitude to the committee for the courtesy extended to me, not only at this time but in the preceding matters, and I do appreciate it.

Mr. MARSHALL. Mr. Donner, would you state your full name for the record, please, sir?

Mr. DONNER. Aaron Donner.

Mr. MARSHALL. And you are an attorney?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. Where do you reside, sir?

Mr. DONNER. I reside at 31 Mowbray Avenue, Bay Shore, N.Y.

Mr. MARSHALL. You served as counsel to the House Select Committee on Intelligence?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. And you are appearing at the invitation of this committee?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. Prior to the hearing, you received copies of House Resolutions 1042 and 1054?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. The rules of this committee?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. Investigative procedures adopted by this committee?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. And the copy of the chairman's opening statement?

Mr. DONNER. I don't believe I received a copy of the chairman's opening statement.

Mr. MARSHALL. The long piece of paper right in front of you.

Mr. DONNER. Yes, sir, I did not receive this, but I will acknowledge receipt of it now and it won't be a bar to my testimony.

Mr. MARSHALL. If you need to consult that at any time, let us know and we will give you ample opportunity to do so.

Mr. DONNER. Thank you.

Mr. MARSHALL. Do you have a prepared statement which you wish to make to the committee?

Mr. DONNER. No, sir.

Mr. MARSHALL. Do you have any oral statement which you wish to make?

Mr. DONNER. I have a few brief observations which I hope will be pertinent to the committee's work. I would like if I may, sir.

Mr. MARSHALL. Yes.

Mr. DONNER. First I recognize the task imposed upon this committee, and I recognize, after reading some transcripts yesterday and attending some of these hearings, the difficulty of the problem presented to this committee, and I do want to make some points that I hope are pertinent.

First, as has been alluded to, on January 23 the select committee adopted the report. I think it was in executive session, but I will

state, if I may, sir, the summary of it was that the report was adopted, which is a matter of fact and I think a matter of public record, and it was adopted with the clear understanding that there would be no further votes of the select committee prior to the printing and release of this report, and therefore as far as the staff is concerned, and as far as my interpretation is concerned, but for the mechanics of actually reducing this report to printing, and editing, and whatever minor changes there were, as of Friday, January 30, it was our firm belief that this report, in the normal course of things, would be released and made public.

Mr. MARSHALL. You said Friday, January 30?

Mr. DONNER. Yes; the following week, that it was the intention at that time as of January 23.

Mr. MARSHALL. January 23 is what you meant.

Mr. DONNER. Right. At that time, however, this was a question whether or not the recommendations of the committee would be given at a different time, and there was a discussion with the chairman and both the minority and the majority of the committee that there would be a request for unanimous consent for additional time in which to print the recommendations of the report, but as far as the report itself, it was almost understood that as of January 30, a week later, the report together with the minority views, would be made available.

All I am trying to make in a sense is that insofar as what happened in the events that you have discussed, which I won't review, which have been discussed here certainly a number of times, whoever did this act, which there is no condonation for, could not have done it in defiance of the congressional resolution of January 29, which had not occurred yet, and assuming Daniel Schorr's statement in the Rolling Stone which you have alluded to is accurate, his act and the act of the individual that apparently provided him with a copy of the report as adopted was prior to the resolution of January 29, so that as far as the nature of the act is concerned, Daniel Schorr probably until January 29 had what might be called in the journalistic trade his "scoop" if you will on his fellow competitors as far as a report is concerned.

Now, setting this in perspective, I really want to comment on the question of security, which this committee has dwelled upon at length. I will not say that I am an expert in security, and I will not pose myself in that position.

However, there is an aspect that of necessity, just in the nature of things of any investigation, which I did participate in one, that there were isolated incidents which undoubtedly may have occurred, and I am not disputing them, grow in size because against a total experience, and they grow in magnitude against a total experience.

However, I can only measure our level of security against what I observed as far as the other agencies which we dealt with, which were the agencies charged with security.

As far as the CIA is concerned, they would casually discuss things on the telephone with us that would almost send us into a state of shock, because we thought those things could never be discussed in any terms.

I received a telephone call from Mitch Rogovin in plain language at my home on Sunday—one Saturday rather—in which he discussed

what we thought was a highly confidential secret, top secret matter. He discussed it with me rather casually on the telephone.

In another incident, the State Department in a closed session with the Secretary of State left the notes of Secretary Kissinger on the table when he left as far as top secret documents are concerned. They were found casually, believe it or not, the following day. We held a hearing in the same room. We went up to the microphone. There were the documents lying there that were top secret documents. I don't know who might have seen them in the interim.

We found that the documents delivered by the CIA would be left with whoever the messenger found there, he would leave it and get a receipt for these papers. We found a division among the security agencies as to what they thought was secret. We found that in a conference which was alluded to of January 23, the CIA was charged with representing OMB's interest, and they would say "Oh, that is the OMB. Don't even pay any attention to them once again. Whatever they raise once again is not really important. We are the guys that are important."

We found the questions were not so much of classification—sometimes they were, I want to be fair—but they were questions of judgment calls as to whole areas that the committee should not even concern itself with, let alone release information.

We found that the President, a counsel to the President, left a document in Congressman Pike's office stuck in the cushion of the couch labeled top secret as he left the office, so that the attitude toward security, I am not saying this for the fact that we should be held to a lesser standard, but I am saying that the standard exercised by the agencies charged with this, I am not saying we equaled or competed with them but they did not reach that magical level of perfection by which we were striving against. Theirs was substantially short of perfection.

We did try. The effort was there, and we may have failed in specific instances, but I say this respectfully to this committee. I do not know if a casual connection has been established between our possible errors or omissions, and the event which brought about this committee's existence, to wit, Daniel Schorr's having a copy of the report.

Commenting again on prior testimony, if I may without a violation of the rules of this committee, but since it was said by Mr. Oliphant, I worked with Mr. Oliphant closely for 6 months. I saw him on a daily basis. I often ate with him. I would say I spoke to him almost daily, and I would say not a single time during that period did he ever complain about security. He had many other complaints of a human nature that people and fellow employees have, but never about security.

I have listened to the members here, and the members once again were offended and aggrieved, and justifiably so by the public release or publication of material which was considered by our committee, but never once did a member come down and say "My gosh, look how you are handling these papers. Look at your Xerox machine. Look at this filing system. Look at this."

There were the human failings in handling of papers. Now I will conclude that as far as the staff is concerned, we have one aspect to this committee investigation that I believe is imposed upon you by the nature of things. That is, day after day apparently reading your transcripts, Members of the House, staff members, and other individuals

come before your committee with an effort once again to search out this charge that is imposed upon the Resolution 1042. Yet once again there is a slightly unusual, and, if I may, bizarre aspect to this, and that is there sits a man—I don't know if he is still in home in Washington—who knows the answer to this question. There sits a man who knows right now with a couple of words could, in effect, solve months and weeks of this committee's deliberation.

I realize, and I am not unmindful of practical problems that are imposed by committees, but there is something a little bit—and I don't mean it as far as the committee is concerned—unfair, that members and the staff, in effect, are cast in a defensive role to justify acts in the past when there sits a man with the answer to the question, because of practical—not so much legal problems in my opinion—cannot be called before this committee and asked the ultimate question: "Mr. Schorr, who gave you the copy of the report?"

With that, I have finished what I have to say.

Mr. MARSHALL. Have you turned over to this committee all documents in your possession relating to the work of the select committee?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. In the event your responses to the questions we are about to put to you may involve information or data concerning an executive session of the select committee, classified information, or information which may tend to defame, degrade, or incriminate any person, would you please bring that to the attention of this committee so it may take timely and appropriate action under the rules of the House?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. OK. Now Mr. Donner, we have had some testimony from Mr. Field that he also was counsel or served in some capacity as a counsel to the committee, and I am not clear as to where his responsibilities began and yours picked up. Could you straighten that out for us, sir?

Mr. DONNER. I may not be able to, sir.

Mr. MARSHALL. All right.

Mr. DONNER. Because of the simple reason that as I joined the committee, I think as of about July 31, 1975, Mr. Field was staff director. He was, in effect, at that time wearing two hats. He was also serving, to some extent, as counsel to the committee.

It was not, as just generally at that time, we would avoid a jurisdictional dispute as to overlapping areas, and I took over the more or less legal, if you will divide it, chores of the committee, and again, not in a perfect organizational table. He handled generally the investigative portion of the committee.

While there was overlapping in certain areas, that was the general division of labor.

Mr. MARSHALL. All right, sir. Now, you mentioned that when the select committee adopted its report on January 23, 1976, I believe you were aware, there was almost a complete understanding, in quotes, "that the report was going to be made public on January 30, 1976." Is that an accurate description of your testimony?

Mr. DONNER. To the best of my recollection. I will withdraw the word "almost."

Mr. MARSHALL. All right. My question is in the committee's motion,

which was approved adopting the report on January 23, was there an express statement that the report was to be made public?

I will state for your information that the committee records do not show that, and I am trying to determine if the records are accurate or inaccurate on that point.

Mr. DONNER. I do not have a clear recollection of what the record says.

However, I do have a clear recollection of what the tenor of that meeting was, that nothing remained for the committee to do with reference to the report except for the mechanics of printing.

Mr. MARSHALL. All right, but was there discussion that the report was going to be made public, that is published to the world on January 30, 1976?

Mr. DONNER. That was my clear impression, because of the method or timetable we were working against to get the report ready for distribution on January 30.

Mr. MARSHALL. All right, was there any statement made as to that point?

Mr. DONNER. I have no recollection, but that was my clear understanding.

Mr. MARSHALL. Can you give us any basis for that understanding?

Mr. DONNER. Yes; because of the substantial discussion among the members as far as getting the minority views together, as far as the proofing of the galleys that would come from the printers, as far as all of the miscellaneous actions that would be necessary, and the members' concern that they get their views, additional views or minority views into the report.

Mr. MARSHALL. Was there any information to the committee or any statement made to the committee that certain members of the committee were going to try to prevent publication of the report; that is, on January 23, 1976, at the time it was adopted?

Mr. DONNER. Yes; there was an underground rumor, OK, which I will just characterize as a rumor rather than discussing, that the administration apparently might go to court to block the printing of the report.

Mr. MARSHALL. Was that discussed by the committee?

Mr. DONNER. Not to my knowledge.

Mr. MARSHALL. Now, did it come to your attention as counsel for the committee that certain leaks had occurred, and had been referred to in newspapers during the course of the select committee's work?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. The testimony heard thus far before this committee is no formal investigation was initiated with regard to those leaks, is that correct, sir?

Mr. DONNER. I will characterize the word "formal" yes, I will accept the word "formal".

Mr. MARSHALL. What investigation was undertaken, whether formal or not, and what were the results in an attempt to identify sources of leaks that had occurred and sources of information that appeared in the newspaper and was on television?

Mr. DONNER. There was one article I believe in Time magazine relating to the NSA which did attribute I think to the select committee as a source or a portion of the article.

We were very concerned and the staff members were very concerned because the NSA carries terrible penalties as far as the release of information of the NSA, and it was just almost a defensive reaction, and human one to be concerned about whether it could be attributed to us.

We carefully checked the article against the notes of our investigators in the NSA and at best we could determine that the article contained far more facts than we ever had possession of, and contained facts in areas that we had never been asked to investigate. And we concluded that whoever attributed it, whoever wrote the article couldn't have attributed it to the committee because we never had the information to begin with.

Another instance was relating to certain events that occurred in the Mideast, that appeared with great exploitation by Daniel Schorr on a television program, and we checked it out. We could never reach a definite conclusion. However, the conclusion was made that a couple of things were possible.

Once again, we are not precluding the possibility of staff disloyalty, but we were concluding that somebody, whoever briefed Mr. Schorr on this particular release, was in possession of a tremendous fund of complicated facts in a difficult chronological order, that would have been difficult for anyone, except a highly briefed staffer, or a member of the administration, to provide.

As it turned out, the article, in the article published in the Times with relation to this event there were constant references, there were references to the committee, but there were also references to a constant consultation with the "agent", they call it "intelligence sources in the intelligence community" or words to that effect.

We never did identify it further.

Mr. MARSHALL. Did you ask Mr. Schorr?

Mr. DONNER. Yes: there was a question asked of Mr. Schorr.

Mr. MARSHALL. What did he respond?

Mr. DONNER. Facetiously, I think, he declined to answer, I will characterize it as with a smirk, and he did not answer the question. But, I am trying to think of any other instance which I can't think of off-hand.

Mr. MARSHALL. You may also be interested to know that Mr. Schorr has declined to be interviewed by this committee thus far, Mr. Donner.

What about an article of January 25 by Mr. John Crewdson in the New York Times in which he makes a statement that he has obtained or the New York Times has obtained a copy of the select committee report? Was any investigation initiated to that?

Mr. DONNER. It was difficult. First of all, appreciating a time frame and the tremendous labor we were working under on the report, we were depressed and offended by it. But, except for accounting for our reports, we had no way of running it down; we had no means of determining whether or not his statement was accurate, but undoubtedly from the article he had substantial access to a copy of the report.

Mr. MARSHALL. All right, sir. Do you know which copy of the select committee report Mr. Crewdson, in your judgment, had access to?

Mr. DONNER. I am going by recollection, sir, of that article, which I haven't seen in many months, but the article, if I remember, was of a summary nature, rather than a specific quoting nature. And I think

he either summarized in the article the report, and I don't think there were many quotes from the report. That is to my recollection.

Mr. MARSHALL. Let me give you a precise quote from the article, and then you may look at it if you would like to. I quote from the January 26 article in the New York Times, byline January 25 by John M. Crewdson: "The 338-page report, which has not been released, but a copy of which was obtained by the New York Times, discloses a number of irregularities uncovered by committee investigators. These include an apparent violation by Central Intelligence Agency of a 1976 Presidential directive prohibiting it from providing secret financial assistance to any of the Nation's educational institutions" and it goes on to discuss budget aspects of that particular subject and some other subjects as well.

I don't know whether that refreshes your recollection.

Mr. DONNER. Not very much. But to save the committee's time, by reviewing it again, once again by reading the article, I am not doubting it, would not serve more than your reading it, sir. I just have no clear recollection.

Mr. MARSHALL. So you cannot then give the committee the benefit of any judgments you may have as to which version of the select committee's report Mr. Crewdson did allude to in this article, is that right, sir?

Mr. DONNER. No, sir.

Mr. MARSHALL. Did you have any information about any followup articles that were to be put out in the New York Times or any other publication concerning the select committee's report?

Mr. DONNER. I don't think I understand your question.

Mr. MARSHALL. All right. Did you have any information or knowledge about any followup articles, that is articles which were also to discuss other aspects of the select committee's report in the New York Times?

Mr. DONNER. I don't know, I don't recall any.

Mr. FLYNT. Let me try to clarify the question.

Mr. DONNER. Yes, sir.

Mr. FLYNT. Did you ever hear that there were to be a series of three articles of which the article that appeared in the issue of January 26 was the first?

Mr. DONNER. Not to my recollection, sir.

Mr. FLYNT. All right, sir.

Mr. MARSHALL. You never heard Mr. Field refer to any three articles that the Times was going to publish?

Mr. DONNER. No, sir.

Mr. MARSHALL. All right, now, did you receive a telephone call from the New York magazine in early February 1976?

Mr. DONNER. Not to my recollection.

Mr. MARSHALL. Did you receive a call from Mr. Aaron Latham of New York magazine in February 1976?

Mr. DONNER. If I did, I have no recollection of it, sir.

Mr. MARSHALL. Did you receive a telephone call at any time following January 23, 1976, from a representative of New York magazine or someone whom you understood to be on the staff of New York magazine?

Mr. DONNER. I will have to answer your question this way, sir: About

that time, with the attendant publicity of the report, I would say there would be 20 or 25 phone calls a day from publications, or people representing themselves as from publications, making various inquiries about the report.

Among them may have been a phone call from somebody like that. But whatever it was, it made no impression on me.

Mr. MARSHALL. What I am trying to determine is if you ever had any discussions about the New York magazine or Mr. Felker or the Village Voice having possession of a draft of the select committee report.

Mr. DONNER. No, sir.

Mr. MARSHALL. Those discussions I am referring to would be any discussions that took place before publication of the report in the Village Voice or after publication.

Mr. DONNER. Certainly none before, because the news that it was going to be published in the Village Voice came as a thunderbolt, and afterwards, I don't recall any such conversation about it, but certainly not before.

Mr. MARSHALL. Now you were present at the meeting of January 22-23 with the members of the executive branch and the staff of the select committee, were you not, sir?

Mr. DONNER. Yes, sir.

Mr. MARSHALL. Now, do you have any knowledge of how many copies, if any, were furnished to the executive branch at that time, that is copies of the select committee report?

Mr. DONNER. I can give you my best recollection.

Mr. MARSHALL. All right, sir.

Mr. DONNER. My best recollection was the meeting was attended by, initially as it developed, myself, and Jack Boos representing the committee, and initially by Mr. Bolton and Mr. Gregg of the CIA. At a later time in the evening a Mr. Packman arrived. I will pronounce the name phonetically, I am not sure of the exact spelling of it, from the State Department.

During the evening also arrived Searle Field, arrived at a later time, I would say maybe 10, tenish, something like that, because we had broken for having a pickup sort of snack.

There was also present at that meeting at a later time for a brief period another representative of the CIA who was called in for a special problem that we were addressing. He addressed that problem, stayed maybe 20 minutes to half an hour and then he left.

At that meeting Mr. Bolton arrived with a copy of the report, which was not on, which he identified, and I have no way of verifying, as a copy of the report which he had obtained from Mr. Rogovin, Mr. Packman arrived without a copy of the report and we gave him a copy of the report in the course of the meeting.

Mr. Gregg was sitting there without a copy of the report, and since we were all alluding to it, it was helpful that we all have a report before us, and he was given a copy of the report at that time.

Mr. MARSHALL. All right, sir. Now, how many copies of the report were taken from that meeting by any representative of the executive branch?

Mr. DONNER. It's my—No. 1, I am reasonably sure Mr. Bolton left with the same copy he brought. I am reasonably sure Mr. Packman left

with the copy we gave him, and I believe, but cannot be certain, that Mr.—and I am not sure—that Mr. Gregg may have left with another copy. But I have no clear recollection at this time.

Mr. MARSHALL. All right. So far as the copies that those persons left with, that you have testified to, were those copies in which changes had been made, based on what happened at the meeting?

Mr. DONNER. In general, once again, changes were being made during the course of the meeting. As items, some of the items were negotiated earlier and some of the items negotiated at the meeting, there were pages and folders of substitute pages, some of which were done at the meeting and some of which were carried as separate folders.

For example, Mr. Bolton left with a separate folder of pages of changes that he was to make in his report at a later time, just for the constraints of time we were working against, with the understanding he would substitute certain pages.

Mr. MARSHALL. Now, after the select committee's report or that portion of it was printed in the Village Voice in the editions of February 16 and February 23, did the select committee or the staff of the select committee make a comparison of its January 23, 1976, draft as adopted by the select committee, with what was printed in the Village Voice to determine the similarity of the two documents?

Mr. DONNER. I have no direct knowledge of that. I know an effort was made by some staff members to make a comparison of it, which I was not directly involved with. And as reported to me by the people who made this, at least not an intensive comparison, but I think a selective comparison, they concluded once again that the Village Voice copy seemed to be a copy more closely related to the January 23 adopted report, and with changes that were made as of the night of January 23 and 24 than it was earlier, but even then in some instances there were variations that, in my mind, I didn't understand how they were clarified.

Mr. MARSHALL. Now, you said changes made on the night of January 23-24, do you have reference to a meeting that occurred on the 22d and 23d that you have already testified to?

Mr. DONNER. And also changes recommended by the committee at the meeting of January 23.

Mr. MARSHALL. I see. But there was no meeting on the night of the 23d extending into the morning of the 24th, was there?

Mr. DONNER. No, sir, but they were made; the staff was working that night, working on changes that had been approved by the committee on that date.

Mr. MARSHALL. Who made this analysis you are telling us about?

Mr. DONNER. Again, I am not sure. But at least I conversed with Jack Boos regarding these changes. And I am not sure whether he was directly involved in this comparison or somebody else had made the comparison and he was reporting or telling me what the conclusions were.

Mr. MARSHALL. Did Mr. Boos report to you that based on his analysis of the Village Voice edition that the Village Voice contained changes that were made as late as the morning of January 23 by the select committee prior to its adoption of the draft?

Mr. DONNER. I think so; yes. But, again that is my impression.

Mr. MARSHALL. Now, did the select committee contact the Village

Voice after it received word that the publication was about to take place or had taken place?

Mr. DONNER. Well, first of all, we did not receive notice that it had, you know, that it was about to take place. Anyway, I did not receive notice it was about to take place. And to contact them after the fact did not seem to be productive of anything. Except additional, you know, sadness and bad feeling. But it did not seem—because it seemed to be one of the more fruitless phone calls to make, “Can you tell me who gave you the copy of the report.” At that time Daniel Schorr was not connected with it.

Mr. MARSHALL. So, I take it the answer was “No.”

Mr. DONNER. No, no, sir, one of the furthest things from my mind.

Mr. MARSHALL. All right, sir.

Do you recall any discussion with Mr. Field about the location of a footnote referring to Senator Jackson?

Mr. DONNER. About the location of the footnote?

Mr. MARSHALL. Yes, sir, where in the report it would be physically located.

Mr. DONNER. Not where it would be physically located, but, about its inclusion I remember, not its location.

Mr. MARSHALL. What was the discussion about its inclusion?

Mr. DONNER. Well, I think it was omitted in the January 19 version, which was given to the members of the committee, and then there was discussion, I think, whether or not it should be included, it was decided that it should be included, and that it was omitted by, I think, oversight and it was agreed that we will try to add that to the report as quickly as possible.

Mr. MARSHALL. And it was added, was it not?

Mr. DONNER. Yes, sir, that is my recollection.

Mr. MARSHALL. Now, Mr. Daniel Schorr has stated in an article in Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976. Did you give the select committee report or a draft of the report, or the text of any portion of the draft or of the report itself to Mr. Schorr or to any other person?

Mr. DONNER. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. DONNER. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the Select Committee report or a draft of the Select Committee report or a text from either?

Mr. DONNER. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. DONNER. No, sir.

Mr. MARSHALL. Did you give the Select Committee report, or make any portion of the Select Committee's report or a draft of that report or the text from a draft or from the report available to anyone outside of the Select Committee on Intelligence?

Mr. DONNER. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Mr. DONNER. No, sir.

Mr. MARSHALL. No further questions, Mr. Chairman.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions, Mr. Chairman.

Mr. FLYNT. I have one question. During the opening statement I understood you to say or to raise the rhetorical question: "How could Daniel Schorr have had a copy"—excuse me, I understood you to say that Daniel Schorr had a copy of this. Did I understand you correctly?

Mr. DONNER. In effect, yes, until the resolution of January 29.

Mr. FLYNT. How could he have had a copy, in the journalistic sense of that word, when the New York Times published a large portion of it on Monday, January 26?

Mr. DONNER. I meant—let me say this to you, as far as Daniel—I meant it only as to Daniel Schorr, not as to exclusive, in other words, I am trying to characterize the nature of what he had up until the resolution of the House of January 29.

Mr. FLYNT. How many people in the media had copies of the report during any part of the period January 23 to January 29?

Mr. DONNER. I have no way of knowing, sir.

Mr. FLYNT. How many do you know of that had it?

Mr. DONNER. The only ones I know of, as reported, once again, as alluded to by Mr. Marshall, where a reporter said he had a copy from which he made these quotes, and as of Daniel Schorr's television broadcast, those are the only ones I know of.

Mr. FLYNT. In which he said he had it?

Mr. DONNER. That is right, sir.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. All I wanted to ask was, since you were counsel for the committee, the question arises in my mind did you voluntarily or were you ever requested to furnish advice as to how classified material should be handled?

Mr. DONNER. Well, not as such, because the House, as I understand it, the House of Representatives does not—in effect receives material almost in the nature of material as executive session material. They receive it, once again, as classified material, and it's cared for in the judgment of the Members who are, in effect, charged with that responsibility.

Insofar as the Select Committee is concerned, I dealt with it—oh, we had a parade daily in through our office of representatives of the CIA, FBI, et cetera, and they approved our various systems, and approved the original security system at the beginning.

We had no complaints from them as far as handling of papers.

Mr. BENNETT. I don't think I really got across my question.

Mr. DONNER. I am sorry.

Mr. BENNETT. It has been testified that the Village Voice publication contains "secret" and "top secret" information. Not only because it came from secret and top secret material, but because it, itself, has that quality.

Now, the question arises in my mind why the counsel of the committee did not have an inquiry as to how to protect that under the law, because that is a legal situation, that is, what is secret and what is not secret? You don't automatically, when you get secret and top secret material in the Congress, declassify it. There are ways of declassifying material, and the real way is to take it to the people who classified it and ask them to declassify it, and there isn't any authority for members of Congress to declassify.

The Congress as a whole could declassify by passing a law, but a committee of Congress doesn't have the power to declassify.

Mr. DONNER. Well, sir, I must confess, I say this respectfully, I hold a contrary opinion legally to you, sir.

Mr. BENNETT. On what authority? Give me the cases?

Mr. DONNER. I have no case to cite for you, sir. I could do research for it, and give you a memorandum.

However, I will give you a citation, a Yale Law Review article which addressed itself to the financial matters and Congress' role with reference to finances in the intelligence community, and the intelligence community classification of financial matters as secret, top secret, and otherwise as running squarely into conflict with that provision of the Constitution which charges Congress to make a public accounting of all funds expended, and with Congress' charge to make public all funds expended. It's difficult to reconcile, as a constitutional issue, the secrecy of the CIA budget in face of the congressional mandate to make public these figures.

Mr. BENNETT. That may be something that is wrong that should be corrected, but it doesn't address itself to what I am really trying to find out, and that is what the attitude of the counsel of the committee was, and the committee as a whole was with regard to material that came to you in a classified nature, and was apparently intended to be declassified by the committee by the publication of this report.

Mr. DONNER. Well, I would say—

Mr. BENNETT. If you have any cases on that I would sure like to read them.

Mr. DONNER. I will try to supply you with some.

Mr. BENNETT. Have you ever read one?

Mr. DONNER. Well, I have read the cases which were related to you, in effect, in the case of something to the extent of the case of United States against Nixon. In the case of United States against Nixon there was the question of the assertion of executive privilege verging on the idea that some of the material belonged only to the executive branch and, therefore, is unavailable to the judiciary.

Mr. BENNETT. You are getting on another subject. I am talking about classified material, under regulations that they can make with regard to the security of our country. You are now talking about the ability of the executive branch to remain secret with regard to its executive functions generally.

Anyway, apparently you must not have a case because I have tried on two cases so far. I would like for you to present, if you could, such information to the committee, but really since we are thinking mostly about the past—and I don't really want you to have to brief something for the future—I will be delighted to have it because that would lead us to how we can correct it in the future. But the real thing I was seeking was the attitude of the counsel and of the committee with regard to this kind of material.

I think you might characterize it by saying, would it be correct to say it was the feeling of the committee and the staff that the committee would, in fact, declassify any material that came to it by the publication of its report?

Mr. DONNER. I wouldn't—I will answer—I am not trying to be

evasive, sir. I will say this, that it was the opinion of a duly constituted committee of Congress, tasked to investigate a certain area, which at the outset of the resolution acknowledged access to classified material, that this committee must be tasked also to report other material we investigated, which obviously, once again, entailed some discussion of the material which may have been secret or top secret.

Mr. BENNETT. Well now, you understand your committee is not the only committee that has ever done this? There are committees of Congress that have done this from the beginning of time.

Mr. DONNER. I am aware of it.

Mr. BENNETT. And the committee which I serve, the Armed Services Committee, does it almost every day, and what we do in that committee, when we have classified material that some way must be made public, we first contact the classifying people to find out whether it can be declassified, and we abide by their classification.

Mr. DONNER. I would add, sir, that puts a dilemma to an individual member serving on a committee, and I do not want to say I wouldn't want the responsibility, because a member of a committee may be confronted with an act that could be a criminal act or substantial misdeed, and to say, once again, the perpetrators of the act have the right to classify their own act and prevent it from becoming public would be a horrendous result.

Mr. BENNETT. I agree. I believe so, but you haven't indicated there was any such act in this report.

Mr. DONNER. I am saying there was in this report, sir.

Mr. BENNETT. You are not saying all of the secret and top secret material in this report would fall in that classification, are you?

Mr. DONNER. Not all, but substantial parts.

Mr. BENNETT. What do you mean by substantial, a majority, or less than a majority?

Mr. DONNER. I am really not equipped to put a percentage on it, sir, but I would say there was a substantial portion of the report that dealt with acts that there were certainly some criminal and possibly many of them unconstitutional.

Mr. BENNETT. I have no further questions.

Mr. FLYNT. Mr. Spence or Mr. Quie?

Mr. SPENCE. No questions.

Mr. QUIE. No questions.

Mr. FLYNT. The committee has no further questions at this time. In the event there should be, in the event it will be necessary to recall you, the committee will advise you in sufficient time for a mutually convenient time for you to appear.

Mr. DONNER. Thank you very much, Mr. Chairman.

Mr. BENNETT. Thanks for being here.

Mr. FLYNT. The committee calls Harold H. Saunders.

Would you raise your right hand, please?

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SAUNDERS. Yes, sir, I do.

Mr. FLYNT. You may be seated.

TESTIMONY OF HAROLD H. SAUNDERS, DIRECTOR OF THE BUREAU OF INTELLIGENCE AND RESEARCH, U.S. DEPARTMENT OF STATE, ACCOMPANIED BY JEFF SMITH, LEGAL ADVISERS OFFICE, AND SAM GOLDBERG, CONGRESSIONAL RELATIONS OFFICE

Mr. SAUNDERS. Thank you.

Mr. FLYNT. Mr. Marshall?

Mr. MARSHALL. Would you state your name for the record, please?

Mr. SAUNDERS. Yes. My name is Harold H. Saunders, and I am the Director of the Bureau of Intelligence and Research in the Department of State, and I have with me Jeff Smith of the Legal Advisors Office and Mr. Sam Goldberg of the Congressional Relations Office of the State Department.

Mr. FLYNT. Mr. Saunders, the committee welcomes you and your associates, Mr. Smith and Mr. Goldberg.

Mr. SAUNDERS. Thank you, sir.

Mr. MARSHALL. Mr. Saunders, you are appearing at the invitation of the committee. Is that right, sir?

Mr. SAUNDERS. Yes, sir.

Mr. MARSHALL. Now, prior to appearing here you have received copies of House Resolutions 1042 and 1054, and the rules of this committee, the investigative procedures adopted by this committee, and a copy of Chairman Flynt's opening statement.

Mr. SAUNDERS. Yes, I had a chance to review those before I came here.

Mr. MARSHALL. All right, sir. Do you have a written statement which you wish to file with the committee at this time?

Mr. SAUNDERS. No, I do not. I was asked after Mr. Packman's appearance the other day to come and answer several specific questions, and I am prepared to do that.

Mr. MARSHALL. Do you have an oral statement which you wish to present now, sir?

Mr. SAUNDERS. No, I don't. I would rather respond to the questions that I was asked to appear to answer.

Mr. MARSHALL. In the event that your evidence or testimony may involve information which you are privy to with regard to any executive session of the Select Committee on Intelligence, or classified information, or information which may tend to defame, degrade, or incriminate any person, please advise this committee so it may take appropriate and timely action under the Rules of the House of Representatives.

Is that agreeable, sir?

Mr. SAUNDERS. Yes, sir.

Mr. MARSHALL. Mr. Saunders, in your capacity in the State Department do you have occasion to have contact with the Select Committee on Intelligence during its deliberations?

Mr. SAUNDERS. I assumed my responsibilities as Director of Bureau of Intelligence and Research last December 1. That was, as you know, after the select committee had been in operation for several months.

The Bureau which I head was charged in the Department for being the coordinating body within the Department for relations with the select committee. By the time I arrived the relationships had been pretty well developed, and I myself never had occasion to be in direct

contact with members of the committee or the staff, except on a few occasions by phone, and on several occasions by letter transmitting documents that had been requested by the committee.

Members of my staff were in contact with the members of the committee staff.

Mr. MARSHALL. Did you have supervisory responsibility over those persons on your staff who were in contact with the select committee staff?

Mr. SAUNDERS. Yes, I did, and within the Department I was in frequent contact with them over their activities.

Mr. MARSHALL. All right, sir. Now, did it come to the attention of you or to you or to the State Department or the executive branch, to your knowledge, that leaks were occurring, according to newspaper accounts, of information which the select committee had knowledge of during the course of its deliberations?

Mr. SAUNDERS. Yes.

Mr. MARSHALL. Was any investigation initiated to determine if the executive branch was a source of those leaks?

Mr. SAUNDERS. Are you referring now to the period when we had copies of the final report?

Mr. MARSHALL. That period or a period prior to that time.

Mr. SAUNDERS. The Department, of course, whenever there are leaks of information, which it believes may have come from within itself, has its own procedures for investigating those leaks.

I do not recall any such occasions with regard to subjects under review by the select committee during this period.

At the time that we were reviewing the final drafts of the Pike committee report itself, there were no occasions when we ordered an investigation because we did not have occasion to believe that any leaks had taken place in which executive branch or at least the State Department personnel were involved.

Mr. MARSHALL. Now, the evidence which this committee has heard thus far is that the executive branch was given a copy of the select committee's report or a draft of January 19, 1976. The evidence presented before this committee thus far is also that the executive branch was given a copy of the select committee's report of January 23, 1976, at least in draft form.

There has been further evidence before this committee that a meeting on January 22, the evening of January 22, and extending into January 23, the morning, was attended by representatives of the State Department, Central Intelligence Agency, with representatives of the select committee staff to determine objections that the executive branch had to certain information appearing in the select committee drafts or drafts of its report.

Was there any investigation by the executive branch into leaks of any of those materials as materials from those reports, to your knowledge?

Mr. SAUNDERS. No, there was not.

Mr. MARSHALL. Now, did it come to the attention of the executive branch that Daniel Schorr on January 28, 1976, exhibited on national television what appeared to be a copy of the select committee's draft report?

Mr. SAUNDERS. Yes; we were aware of that.

Mr. MARSHALL. Was there any investigation following that television show on January 28, 1976, as to whether the executive branch could have been the source of Mr. Schorr's obtaining that report?

Mr. SAUNDERS. We did not institute a formal investigation. Our work, throughout that period that you have just described, on the drafts of the report was directed fully to the purpose of urging the committee not to publish the report, because of the classified materials contained in it, and because of the danger to foreign relations, and to intelligence procedures that we felt would follow from a publication of the report.

We judged that the small handful of us involved in handling these drafts were so dedicated to the proposition that there should be no release that it was just inconceivable that anybody handling the report within the State Department would have been involved in its release.

Therefore, we felt there was no need for an investigation. Moreover, the number of people involved in the Department and having in their control copies of the report were very small, and all persons involved were personally known to me, so it didn't occur to me that an investigation was required.

Therefore, we did not have one.

Mr. MARSHALL. When you say "we did not have one," you are referring strictly to the State Department?

Mr. SAUNDERS. Department of State.

Mr. MARSHALL. Department of State.

Mr. SAUNDERS. Yes.

Mr. MARSHALL. Now, after the Village Voice published the editions dated February 16 and February 23, did the Department of State initiate an investigation to determine if it might be a source of that report?

Mr. SAUNDERS. No. I think the same general considerations that I have just described apply to that period as well as to the earlier period.

Mr. MARSHALL. Now, after the Village Voice published the editions dated February 16 and February 23, did the Department of State initiate an investigation to determine if it might be a source of that report?

Mr. SAUNDERS. I don't know.

Mr. MARSHALL. At least—

Mr. SAUNDERS. I am not aware of any, but I would not necessarily have been aware of internal investigations that they might have had.

Mr. MARSHALL. If the State Department had been contacted about an investigation, I take it you would have been the logical person to at least have been aware that such contact had been made.

Mr. SAUNDERS. Oh, yes, and, if any cooperation had been requested, our Bureau would have been the one to provide that cooperation.

Mr. MARSHALL. I take it from your testimony no such contact was made by the Central Intelligence Agency?

Mr. SAUNDERS. No formal contact with me, and none that I am aware of with members of my staff, and there was nothing that followed from such a request.

Mr. MARSHALL. Was there an informal contact?

Mr. SAUNDERS. Not that I am aware of. I am just—

Mr. MARSHALL. As I understand your testimony, and I want to be clear on it.

Mr. SAUNDERS. Sure.

Mr. MARSHALL. Without being repetitive, as I understand your testimony, the State Department initiated no investigation to determine if the State Department could be a source, or was a source of leaks of any information which had been supplied to the Select Committee on Intelligence, is that correct, sir?

Mr. SAUNDERS. That is correct. But we felt we had tight enough control over the group handling the drafts so that in a sense we reached our own conclusion very quickly that this was not a possibility. Therefore, no formal investigation, nothing that would have extended knowledge that we already had about the access and control of the documents was necessary.

Mr. MARSHALL. And no formal investigation for those reasons, I take it, was initiated to determine whether any copy of the report of the Select Committee on Intelligence or a draft of that report had been leaked to unauthorized persons, is that right?

Mr. SAUNDERS. That is right. No investigation.

Mr. MARSHALL. That is all of the questions I have.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Saunders, the committee has no further questions at this time. We thank you for your appearance, as well as the appearance jointly with you of Mr. Smith and Mr. Goldberg. And with the thanks of the committee, you are excused.

Mr. SAUNDERS. Thank you very much, sir.

Mr. FLYNT. The committee stands in recess until 3 o'clock this afternoon, to reconvene in this same room at that time.

[Whereupon, at 2:05 p.m. the committee recessed, to reconvene at 3:00 p.m. this afternoon.]

AFTERNOON SESSION

Mr. FLYNT. The committee will come to order.

The committee is in open session. A quorum is present for the purpose of taking testimony and receiving evidence.

Mr. Warren Nelson, would you please rise and be sworn.

Mr. FLYNT. You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. NELSON. I affirm.

TESTIMONY OF WARREN LOUIS NELSON, LEGISLATIVE ASSISTANT, OFFICE OF CONGRESSMAN LES ASPIN OF WISCONSIN

Mr. FLYNT. You may be seated.

I believe you affirmed?

Mr. NELSON. That is correct.

Mr. MARSHALL. Will you state your full name for the record?

Mr. NELSON. Warren Louis Nelson.

Mr. MARSHALL. You are appearing at the invitation of the committee?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Mr. Nelson, prior to attending the hearing you received copies of House Resolutions 1042 and 1054, the rules of this committee, the investigative procedures adopted by this committee, and a copy of the chairman's opening statement. Is that correct, sir?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee?

Mr. NELSON. No, I do not.

Mr. MARSHALL. Do you have an oral statement you wish to make to the committee?

Mr. NELSON. No, sir.

Mr. MARSHALL. Have you delivered to the committee staff any documents in your possession relating to the work of the House Select Committee on Intelligence?

Mr. NELSON. No specific documents were requested and we have no committee documents in our hands.

Mr. MARSHALL. When you say "our" you are referring to——

Mr. NELSON. To the office.

Mr. MARSHALL. Which office?

Mr. NELSON. The office of Congressman Les Aspin.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information which may defame, degrade or incriminate any person, would you please advise the committee so we may take timely action under the Rules of the House of Representatives?

Mr. NELSON. Yes.

Mr. MARSHALL. Mr. Nelson, where are you presently employed, sir?

Mr. NELSON. By the office of Congressman Les Aspin of Wisconsin.

Mr. MARSHALL. In what capacity are you so employed?

Mr. NELSON. Legislative assistant.

Mr. MARSHALL. How long have you been employed in that classification?

Mr. NELSON. Since late October of 1975.

Mr. MARSHALL. Were you a legislative assistant to Congressman Aspin while he served as a member of the Select Committee on Intelligence?

Mr. NELSON. For the latter part of that period from October until the end of the committee.

Mr. MARSHALL. Have you remained in continuous employment with Congressman Aspin since assuming your duties in October of 1975?

Mr. NELSON. Yes.

Mr. MARSHALL. Did you have access to a portion of the report or a draft of the report of the House Select Committee on Intelligence?

Mr. NELSON. I had access to the entire report.

Mr. MARSHALL. When did you first have access to the entire report?

Mr. NELSON. The minute it was delivered to the office.

Mr. MARSHALL. This committee has heard testimony that an initial draft of the select committee's report was distributed on January 19, 1975. Was that the date that you had access to the report?

Mr. NELSON. I can't frankly recall the dates but from the calendar I assume that is it.

Mr. MARSHALL. How did you happen to have access to the report?

Mr. NELSON. My job for the Congressman, the moment I was hired, was to be the liaison with the intelligence committee and to work with them in devising the list and program of recommendations which he wanted to make at the end of the committee's hearings.

Mr. MARSHALL. How did you physically get the report?

Mr. NELSON. My desk is right near the receptionist's office. I was there when it came up. He had me calling the committee all day long asking when it was going to come up.

Mr. MARSHALL. Do you recall the name of the person who delivered it to the Congressman's office?

Mr. NELSON. There were two deliveries. Greg Rushford delivered one of the copies. I don't know whether that was the first or second time.

Mr. MARSHALL. When was the second copy delivered?

Mr. NELSON. It was during the—I could swear the copies were delivered on Friday but the record shows they were delivered on Monday. That obviously is not supported by the record.

Mr. MARSHALL. When you say there were two copies delivered are you referring to two copies of the same draft or a subsequent draft being delivered as a second copy?

Mr. NELSON. I am talking about the delivery by hand to the office of the first draft of the report and the delivery by hand of the final draft of the report.

Mr. MARSHALL. Our records indicate the date of the draft was January 23, 1976, and that distribution was made to some Congressmen on that date as well as on the 24th. Do you recall which of these two dates?

Mr. NELSON. The 23d was Friday, wasn't it?

Mr. MARSHALL. Yes.

Mr. NELSON. It was delivered on an office working day, so it must have been Friday.

Mr. MARSHALL. At the time that you received the copy of the January 19 draft did you have a security clearance?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. What was that clearance?

Mr. NELSON. Top secret. I think it was an interim clearance at that time because my employment—well, I am not sure exactly when—an interim clearance for several months before this full clearance came through.

Mr. MARSHALL. The final full clearance did come through?

Mr. NELSON. It has come through. I am not sure whether it had come through before or after that event.

Mr. MARSHALL. What did you do with the January 19 draft when you received a copy of it?

Mr. NELSON. Took it to the Congressmen.

Mr. MARSHALL. Did you deliver it to him personally?

Mr. NELSON. Yes. He had been very anxious to get it.

Mr. MARSHALL. Did you turn over a portion of the report to the Reuters News Agency?

Mr. NELSON. I turned three pages of a draft—I don't remember the

time sequence—one of the drafts over to a representative of the news agency.

Mr. MARSHALL. When was that turnover made?

Mr. NELSON. I don't frankly recall.

Mr. MARSHALL. Do you recall whether it was before or after the select committee had adopted its final report on January 23, 1976?

Mr. NELSON. I am not sure. I think it was before.

Mr. MARSHALL. To whom did you turn those three pages over?

Mr. NELSON. To Mr. Ranjit DeSilva.

Mr. MARSHALL. What was the reason for your turning those three pages over to Mr. DeSilva?

Mr. NELSON. I was formerly employed by a rival of Reuters. I had known him for some time and I had stumbled across those three pages in the draft and read them very carefully two or three times, and it was quite obvious not a great deal of thought had gone into the drafting of that part of the report. It accused and defamed every employee of the Reuters News Agency but also carried the potential for damage to Reuters News Agency, and it is sort of an old rule in the news business, if you have bad information about yourself, the best person for it to come from is the person involved, so I felt a moral obligation to contact somebody with Reuters and show them what was about to come out of the report and give them the opportunity to present that information with their own position on it.

The report was leaking like a sieve and it was quite obvious it was going to come out some time.

Mr. MARSHALL. I don't quite understand the reference "if you have bad information about yourself." You were not paid by Reuters.

Mr. NELSON. No. I say, in the news field there is sort of a rule that if there is bad information about a person, the best way to defuse it is for that person to announce it himself.

Mr. MARSHALL. You were going to give Reuters News Agency an opportunity to announce it yourself?

Mr. NELSON. Right.

Mr. MARSHALL. Did Congressman Aspin know you were planning to turn these three pages over to Reuters; you were going to do this?

Mr. NELSON. No, sir.

Mr. MARSHALL. You did this on your own decision?

Mr. NELSON. Yes.

Mr. MARSHALL. Did you make copies of the three pages, or how did you otherwise turn those three pages over?

Mr. NELSON. I Xeroxed the three pages.

Mr. MARSHALL. Did you Xerox any other portions of the select committee report from which you took the three pages?

Mr. NELSON. At other times working in the office we Xeroxed pages. I did not Xerox any other page for Reuters—by the way, I think it is three pages; it may be two pages. It's just that last block of that chapter.

Mr. MARSHALL. At the time you turned these three pages or two pages, whatever they were, over to the Reuters News Agency, were you aware that the report had not been made public?

Mr. NELSON. Yes, sir. I was also aware there were a flood of leaks.

Mr. MARSHALL. We will get to that in a moment but I am simply trying to establish what was in your mind.

Mr. NELSON. I understand.

Mr. MARSHALL. Did you think at that time you were violating any obligation that you had to either your employer, Mr. Aspin, or to the House of Representatives?

Mr. NELSON. No, sir.

Mr. MARSHALL. Would you care to elaborate on that?

Mr. NELSON. The information was not—the report was not classified, did not contain a cover sheet, did not contain the word “secret” stamped at the bottom and top of any of the pages. The committee a few days later voted it did not contain any classified information by a vote of 9 to 4, and still later Mr. Colby in talking about that Reuters section said that the information that he supposedly had given the committee he had no note, that his words were taken out of context, and you can’t very well classify something which did not happen.

Mr. BENNETT. Mr. Colby said what?

Mr. NELSON. Mr. Colby said that he was taken out of context. The information on the connection of Reuters to the CIA was based on something which Colby said to the committee. He said his words were taken out of context, and if you look at the whole paragraph it is clear he did not say what the committee report indicated he said, and you cannot classify something which did not happen. That is my point.

Mr. MARSHALL. I don’t mean to quarrel with you on any later events that make you feel justified in your decision to turn these pages over, but I do want to give you a full opportunity to explain any reasons you have for doing it, not after-the-fact reasons. So let me again put the question to you:

Is there anything else you wish to say for the record as to why you turned it over to the Reuters Agency?

Mr. NELSON. As I said, the document was not classified. And as I described earlier, I felt I had a moral responsibility to help out individuals who were friends of mine and potentially could be defamed, and a corporation which potentially could face financial problems as a result of such a charge.

Mr. MARSHALL. Did you make any inquiry as to whether the pages referring to Reuters were pages reflecting matters taken up in executive session of the select committee before you turned it over to Reuters?

Mr. NELSON. No, sir.

Mr. MARSHALL. Do you know for a fact whether they were?

Mr. NELSON. I am 95 percent sure they were because the story would have come out earlier.

Mr. MARSHALL. Were you aware at the time you turned it over to Reuters?

Mr. NELSON. It was my assumption at the time I turned it over to Reuters that it had been in executive session.

Mr. MARSHALL. Are you aware of the executive session rules of the House of Representatives?

Mr. NELSON. We are not talking about the executive session now. We are talking about the text of the report which was not classified.

Mr. MARSHALL. What I am trying to get from you, sir, is this: At the time you turned the pages over to Reuters were you aware that that information on those pages concerning Reuters was information

which had been developed in executive session of the House Select Committee on Intelligence?

Mr. NELSON. The best way I can answer: I was not unaware of it. I don't know what the footnotes said at that point. I didn't think about it. I knew it had not previously come out in one forum or another. The forum I didn't consider.

Mr. MARSHALL. Was it not correct that the report itself, that is, the report of the select committee was itself a product of executive session?

Mr. NELSON. The report itself was a product of many, many different things.

Mr. MARSHALL. But they were executive sessions, were they not, when the report was actually assembled and voted on?

Mr. NELSON. The contents of the report were based on executive sessions, public sessions, things that never occurred in any session, documents that are classified, documents that were unclassified, the opinions of investigators. It was based on many different things.

Mr. MARSHALL. But you did not make an attempt to determine whether the Reuters information was, in fact, executive session or public session or from some other document? Is that your testimony?

Mr. NELSON. No, sir.

Mr. MARSHALL. Did you subsequently bring this to the attention of Congressman Aspin?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. When was that?

Mr. NELSON. I don't recall, at some later date.

Mr. MARSHALL. A good bit later?

Mr. NELSON. Frankly I have no idea. I didn't record it. I don't know whether it was days or weeks.

Mr. MARSHALL. Or a month later?

Mr. NELSON. Or even a month later.

Mr. MARSHALL. You mentioned in your testimony that there were other leaks going on at the same time?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Could you tell us what you know about those?

Mr. NELSON. Only from what I read in the paper.

Mr. MARSHALL. Were you aware that other leaks were going on at the time you had the information and turned it over to Reuters?

Mr. NELSON. Yes, because the first leak occurred the very first day the report had come out.

Mr. MARSHALL. January 19?

Mr. NELSON. The following morning's New York Times.

Mr. MARSHALL. Do you know of any other evidence that there were leaks other than the newspaper accounts you referred to?

Mr. NELSON. No, sir.

Mr. MARSHALL. Did you have any contact with Mr. Crewdson of the New York Times concerning the select committee's report?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Would you tell us when that contact was?

Mr. NELSON. There were numerous phone calls from him.

Mr. MARSHALL. Can you give us a time frame for those phone calls?

Mr. NELSON. During the 2 weeks that the report was under consideration, basically. I don't remember the dates.

Mr. MARSHALL. Are you saying from January 23 back 2 weeks?

Mr. NELSON. From January 19—he didn't contact me then but from a period after the report was released until after it became a dead issue is the best thing to say, until it was published.

Mr. MARSHALL. Are you referring from January 23 forward for 2 weeks?

Mr. NELSON. January 19 forward.

Mr. MARSHALL. All right, sir. Could you tell us what the nature of those contacts was?

Mr. NELSON. He asked if I would give him the report.

Mr. MARSHALL. I couldn't hear you.

Mr. NELSON. He asked if I would give him the report.

Mr. MARSHALL. What did you say?

Mr. NELSON. Rather boldly.

Mr. MARSHALL. What did you respond?

Mr. NELSON. "No."

Mr. MARSHALL. Was there anything else? Was it just a one-sentence conversation and he hung up, or can you tell us what he said?

Mr. NELSON. He pleaded, he cajoled, and at one point he called up and said, "You are my last hope." It was about four or five conversations on successive days. He was obviously making the rounds of numerous people.

Mr. MARSHALL. Did you know Mr. Crewdson before this contact?

Mr. NELSON. No, sir.

Mr. MARSHALL. Do you know how he happened to pick you as a contact?

Mr. NELSON. No, sir. He was presumably phoning people who were in the employ of Congressmen on the committee and I was known among many newsmen—as are here at the table—to have been the Congressman's contact with the committee.

Mr. MARSHALL. Had you had any communication with Mr. Crewdson before this series of telephone calls?

Mr. NELSON. I still don't know Mr. Crewdson. I have never seen him.

Mr. MARSHALL. The first of those calls was the first and only contact you had with him up until that point?

Mr. NELSON. They are the only in toto. I have never had any since then. I had no further use for him nor he had no further use for me.

Mr. MARSHALL. It is your testimony you refused to give Mr. Crewdson access to the report; is that right?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Did you give him access to any portion of the report?

Mr. NELSON. No, sir.

Mr. MARSHALL. Are you familiar with an article of Mr. Crewdson, at least published under his byline on January 26, 1976, in the New York Times where the article says, and I quote:

"The 338-page report which has not been released but a copy of which was obtained by the New York Times discloses a number of irregularities uncovered by committee investigators."

Do you recall seeing that article at all?

Mr. NELSON. I read most of his articles in that period. I don't recall that article in particular.

Mr. MARSHALL. But to the extent that this article indicates the New

York Times has a copy or had a copy of the report, is it your testimony you have no knowledge as to where it got it from?

Mr. NELSON. I had absolutely no knowledge. He didn't respond to my question either.

Mr. MARSHALL. Did you ever ask Mr. Crewdson whether he had a copy of the report?

Mr. NELSON. Yes.

Mr. MARSHALL. When was that?

Mr. NELSON. The day before—it would have been Wednesday—the Thursday on which the House in floor action voted to secure the report.

Mr. MARSHALL. The Thursday was January 29, 1976. Was it January 28?

Mr. NELSON. Yes.

Mr. MARSHALL. What did he respond?

Mr. NELSON. He asked that I keep it confidential. I think with the passage of time this no longer has any significance. He said that he had had access to the report for a while and he no longer had a copy of the report.

Mr. MARSHALL. Did he say where he got access to the report?

Mr. NELSON. No.

Mr. MARSHALL. Did you ask him?

Mr. NELSON. I don't think I did at that point. At one point I think I asked him.

Mr. MARSHALL. Did he say anything else about this in his conversation on January 28?

Mr. NELSON. The purpose of my conversation was to try to ascertain if the New York Times was planning to print it. I asked him if the New York Times was going to print it and show the House vote to lock it up, as we were beginning to think it might, and he hemmed and hawed a bit and said the paper would certainly like to print something like that. It was an indirect response. I guess that sparked it in my mind.

I said, "You do have a copy of the report."

He said, "I don't want this to go around but just as a confidence between you and me I no longer have a copy."

Mr. MARSHALL. Did you ask him when he had obtained the copy?

Mr. NELSON. No.

Mr. MARSHALL. Did he say how long he had had the copy?

Mr. NELSON. No.

Mr. MARSHALL. Was there anything else that transpired in that conversation with Mr. Crewdson?

Mr. NELSON. Nothing of significance that I can recall.

Mr. MARSHALL. Do you recall anything else about the conversation?

Mr. NELSON. No.

Mr. MARSHALL. Do you recall Mr. Crewdson telling you on this other occasion that he had access to 100 pages of the report?

Mr. NELSON. He wrote that. I remember that from the first article.

Mr. MARSHALL. In the New York Times?

Mr. NELSON. Yes.

Mr. MARSHALL. The January 20 article?

Mr. NELSON. The January 20 article, yes.

Mr. MARSHALL. But he did not tell you that?

Mr. NELSON. I don't think so. My source of information for that fact is the text of the New York Times, which indicated to me he had not gotten the whole report.

Mr. MARSHALL. You stated that on another occasion you had asked Mr. Crewdson where he got the report.

Mr. NELSON. I believe I did.

Mr. MARSHALL. Was this another telephone conversation?

Mr. NELSON. Yes; they were all telephone conversations.

Mr. MARSHALL. Tell us what was said by you and by him in that conversation.

Mr. NELSON. I think I asked him somewhere along the line where he got the report, and he said something like, "I am not going to say."

Mr. MARSHALL. When did that telephone conversation occur?

Mr. NELSON. I don't know. I can't separate one of these from another really.

Mr. MARSHALL. Can you tell us when these telephone conversations ceased?

Mr. NELSON. I know they ceased before, and well before, it was published in the Village Voice. I don't believe he phoned me after the report was quashed by the House floor vote, but I am not sure about that, frankly.

Mr. MARSHALL. Did Mr. Crewdson ever make any statement to you that he had spent too much time making notes and not enough time copying the report when it was in his possession?

Mr. NELSON. No. I think I made that observation. I believe that I made that observation to one of the investigators, that he obviously had spent too much time taking notes.

Mr. MARSHALL. Those were your words, not Mr. Crewdson's?

Mr. NELSON. Yes. Or that he had not been able or that he had gotten access to the report on the ground rules that he could only make notes and not be able to Xerox it.

Mr. MARSHALL. Mr. Daniel Schorr has stated in an article in the Rolling Stone on April 8, 1976, that he had possession of the select committee report on January 19, 1975. Did you give this report or a draft or text from either the report or the draft to Mr. Schorr or to any other person?

Mr. NELSON. No, I did not.

Mr. MARSHALL. Do you know anyone who did?

Mr. NELSON. No, I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the select committee report or a draft of the report or text from either the draft or the final report?

Mr. NELSON. No beyond what was written in Rolling Stone and elsewhere. I have no independent knowledge.

Mr. MARSHALL. Do you have any knowledge other than what you have testified to here on that subject?

Mr. NELSON. No; other than the various contacts that I had with newsmen which I discussed with the investigators, but I had no knowledge of leaks beyond what we are talking about here.

Mr. MARSHALL. Do you have any knowledge of the circumstances surrounding the publication of the select committee report or a draft of the report, other than what you have testified to here?

Mr. NELSON. No.

Mr. MARSHALL. Do you know anyone who has such knowledge?

Mr. NELSON. No, sir.

Mr. MARSHALL. Did you give the report of the select committee or make any report of the select committee or draft of the report of the select committee or a text from the draft or from the final report available to anyone outside the Select Committee on Intelligence?

Mr. NELSON. We talked about the 3 pages to Reuters.

Mr. MARSHALL. Besides that.

Mr. NELSON. Staff members, of course, had access to the report, and that is it.

Mr. MARSHALL. So you did not make the report or any draft available to anyone outside the Select Committee on Intelligence; is that right?

Mr. NELSON. That is right.

Mr. MARSHALL. Do you know of anyone who did?

Mr. NELSON. No, sir.

Mr. FLYNT. There is a recorded vote in progress on the floor of the House. The committee will suspend and reconvene following the completion of the vote which is now in progress.

[Recess.]

Mr. FLYNT. The committee will come to order.

The committee is in open session, a quorum is present.

We will proceed with the taking of testimony. Mr. Nelson is still on the stand.

Mr. Bennett, do you have a question?

Mr. BENNETT. No.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Marshall, do you have further questions?

Mr. MARSHALL. Yes, sir, one more question.

Mr. Nelson, you stated there were two reports sent around to Congressman Aspin's office, the January 19 draft and the January 23 draft; is that right, sir?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Is it your testimony that you had access to both drafts?

Mr. NELSON. Yes, sir.

Mr. MARSHALL. Do you know what happened to either draft?

Mr. NELSON. In the end, you mean?

Mr. MARSHALL. Yes.

Mr. NELSON. We kept them in the office in our safe until your committee investigators—Mr. Hudson and I have forgotten the other—gentleman came to interview Mr. Aspin, and they were taken out of the safe and given to them.

Mr. MARSHALL. That is all I have.

Mr. FLYNT. Are there any further questions of the committee?

Mr. MARSHALL. When you testified you said something about an extra copy. Was it an extra copy of the January 19 or January 23 draft turned over to your office?

Mr. NELSON. Yes, the first draft—the sequence of events is a little vague in my mind. I think I took home one volume and the Congressman took home the other volume and he left his volume at home and the next day when that was being taken up by the committee, he then

asked the committee for another copy and brought that back to the office with him and the next day brought in the copy he had at home. So we had two volume 1's and one volume 2.

Mr. MARSHALL. Do you know what happened to the second volume 1?

Mr. NELSON. Yes. That was never updated. That remained just sitting back in the office until after the publication in the Village Voice. I received a call from a member of the staff of the Intelligence Committee who said she wanted to check some of the copies of the report and she just simply retained the extra first volume.

Mr. MARSHALL. Do you know who this select committee staff member was?

Mr. NELSON. I am great with names. [Pause.] Something like Skeketoff.

Mr. MARSHALL. Emily Sheketoff?

Mr. NELSON. Yes.

Mr. FLYNT. There being no further questions, Mr. Nelson, you may be excused.

Mr. NELSON. Thank you, sir.

Mr. FLYNT. Miss Jacqueline Hess, please.

Miss Hess, I will let you take the oath while seated.

You do solemnly swear that the testimony you will give before this committee on matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you, God?

Miss HESS. Yes.

TESTIMONY OF JACQUELINE HESS, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY TERRY F. LENZNER, COUNSEL

Mr. FLYNT. Mr. Marshall.

Mr. LENZNER. Mr. Chairman, I might say my name is Terry F. Lenzner. I am counsel for Miss Hess, and we appreciate the courtesy of the staff and the committee for rearranging the appearance of Miss Hess so that she could recuperate from her injury.

Mr. FLYNT. We welcome you before this committee.

Mr. MARSHALL. Would you state your full name for the record, please.

Ms. HESS. Jacqueline Hess.

Mr. MARSHALL. Are you presently employed, Miss Hess?

Ms. HESS. No.

Mr. MARSHALL. Where do you live?

Ms. HESS. I just moved. 215 Constitution Avenue, Northeast, Apartment 606, Washington, D.C. 20002.

Mr. MARSHALL. Miss Hess, you are appearing here at the invitation of the committee.

Ms. HESS. That is correct.

Mr. MARSHALL. You are of course appearing with counsel who has already identified himself for the record.

Ms. HESS. Yes.

Mr. MARSHALL. Prior to this hearing you received copies of House Resolution 1042 and 1054, a copy of the rules of this committee, the investigative procedures adopted by this committee, and a copy of Chairman Flynt's opening statement, have you not?

~~Ms. Hess.~~ No, But I have it now.

Mr. MARSHALL. Let me tell you and your counsel that if you wish to consult at any time during the questions, please feel free to do so. Also you may wish to refer to the documents you have before you which I have just identified, and if you should, please do so, and we will give you ample opportunity to do so.

Do you have a written statement you wish to make to the committee?

Ms. HESS. No.

Mr. MARSHALL. Do you have an oral statement that you would like to make to the committee?

Ms. HESS. No.

Mr. MARSHALL. Miss Hess, have you turned over to the committee or committee staff all documents in your possession relating to the work of the Select Committee on Intelligence?

Ms. HESS. To your committee staff? I don't believe I have turned over any documents. I have no documents to turn over.

Mr. MARSHALL. Do you have any documents relating to the House Select Committee on Intelligence in your possession?

Ms. HESS. Related to the committee's mandate? What they studied?

Mr. MARSHALL. Yes; relating in any way to the subject matter.

Ms. HESS. Informal materials, copies of my own memorandums or anything?

Mr. MARSHALL. Yes.

Ms. HESS. Do I have any?

Mr. MARSHALL. Yes.

Ms. HESS. I have some informal notes that were not requested and were not turned over.

Mr. LENZNER. I do not think any request was made prior to this for these materials.

Mr. MARSHALL. Let me ask you. Do you have any objection to the committee looking at the materials in your possession.

Ms. HESS. No.

Mr. MARSHALL. Mr. Bowers, will you make arrangements with Miss Hess to do that.

Ms. HESS. There are no documents I am specifically thinking of. I will be glad to look through papers to see if there is anything there.

Mr. MARSHALL. Mr. David Bowers of our staff will contact you to make appropriate arrangements to examine anything in your possession relating to the select committee's work.

[Witness conferred with counsel.]

Ms. HESS. Mr. Lenzner would like me to clarify. We are not speaking of any documents that came from any agency. I have no official originating documents that may have originated from our committee or from any other agency.

Mr. MARSHALL. You do not have any such documents?

Ms. HESS. No. I am talking about purely informal things that maybe I jotted down.

Mr. MARSHALL. You will allow the committee to examine those?

Ms. HESS. Yes.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence on classified information which may tend to

defame, degrade, or incriminate any person, please call that to this committee's attention so we may take timely and appropriate action.

Ms. HESS. Yes.

Mr. MARSHALL. Miss Hess, what were your job title and responsibilities with the Select Committee on Intelligence?

Ms. HESS. My job title was research department director. My responsibilities included supervising staff of seven people who were basically clerical help I would say. They were supposed to be researchers but they did mostly clerical work.

Mr. MARSHALL. When did you come to the Select Committee on Intelligence to assume those responsibilities?

Ms. HESS. July 1, 1975.

Mr. MARSHALL. When did your responsibilities terminate?

Ms. HESS. April 30, 1976.

Mr. MARSHALL. As a part of your duties were you responsible for maintenance and security of classified documents which were turned over to the select committee by various departments of the Government?

Ms. HESS. Yes, I was.

Mr. MARSHALL. When did you begin that aspect of your duties?

Ms. HESS. Approximately the last week of August 1975.

Mr. MARSHALL. Did you continue those duties until you left the staff of the select committee?

Ms. HESS. That is correct.

Mr. MARSHALL. What background and experience in dealing with classified information did you bring to that job?

Ms. HESS. None.

Mr. MARSHALL. Did you receive any instructions at the time you began those duties?

Ms. HESS. I received a briefing at the Central Intelligence Agency specifically on security.

Mr. MARSHALL. How long was that briefing?

Ms. HESS. I really don't remember. I would estimate 2 to 3 hours.

Mr. MARSHALL. Could you just summarize for us briefly the subject matter of the briefing?

Ms. HESS. It had to do—one of the first things I had to do was design a physical security setup, and most of the briefing was on physical security and the possibilities that were available to me, what the preferences of the CIA were. We discussed options. We discussed different types of locks, different types of electronic surveillance, human surveillance.

Basically that is what we discussed.

Mr. MARSHALL. Did you receive instructions—

Ms. HESS. Excuse me, sir.

[Witness conferred with counsel.]

Mr. FLYNT. The committee will suspend in order that the members may answer a quorum call which is in progress. The committee will reconvene at the completion of the quorum call.

Mr. BENNETT. The committee will come back in session.

Mr. MARSHALL. I believe, Ms. Hess, you were telling us about the subject matter of the briefing at the CIA.

Ms. HESS. Yes.

Mr. MARSHALL. Did you complete your answer to that question?

Ms. HESS. Yes; I did, as to that one contact with the CIA. There were several contacts with the CIA within that particular week or 2-week period as I was constructing the physical security system. They, of course, wanted some kind of verification, and they were granted that kind of verification by Mr. Field.

We were subsequently visited by someone from the CIA, I believe someone from the White House, and possibly someone from the staff. I don't know where exactly they were from. They did check the system over and pass a judgment on it that it was quite adequate.

Mr. MARSHALL. Could you describe for us what the security system was that the select committee had?

Ms. HESS. Our office space was subdivided into three different areas. The last area from the entry was considered the secure area. The whole area was considered secure, but the area was in fact divided again, so that the latter half of that room was protected with what is known as a motion detector. It was protected by two motion detectors, so that any motion within that area would set off an alarm at the chief of police's headquarters over in Longworth.

The doors into that secure area were blocked off with metal strips that kept any kind of access from the committees whose back doors would have entered into our area. We had what is known as warm-body protection. We had a 24-hour guard at the entrance which would be the B-316 entrance in Rayburn. He maintained a log of all visitors, anyone other than committee staff who came and left at any time, day or night. He also had the control for the electronic system at his desk, and his orders were reasonably specific as to when the system was to be on and off at night or on the weekends basically it was to be on, so that there could be no activity undetected in that backroom.

We had another access door, B-317, which was initially locked from the outside but not from the inside. You could leave, and at first I tried a sign saying "emergency exit, don't use this." That was abused, so I changed the lock and made it one of these indoor-outdoor locks that can't be opened from either side except with a key.

I had the key, Miss Andrade had a key, just as I had combinations to the safe and Miss Andrade had a copy of the combinations. We had a documents control clerk who was stationed in the secure area at all times during business hours.

Mr. MARSHALL. Who was that?

Ms. HESS. Herb Brooks. It was his job to see to it that no one left the secure area without signing for the documents that may or may not have been taken out. It was determined early on, by Mr. Field, that the entire office area was to be considered secure in that staffers were allowed to work with documents at their desks.

Mr. MARSHALL. Did you have any instances where those security devices broke down or failed to function?

Ms. HESS. We had, as I recall, twice the electronic system failed, where I had to call in people to repair it. What we had more frequently was just a guard or someone, maybe over at the Longworth, who wasn't familiar with the system, where they would report that it wasn't functioning, and then when I checked it out with someone who knew the system, it turns out it was functioning, so I think it really only broke down twice.

Mr. MARSHALL. During the period, say, from January 15 through

January 30, were there any instances where there was evidence that the security systems you have described broke down?

Ms. HESS. Are we talking about the electronic surveillance?

Mr. MARSHALL. Yes, ma'am.

Ms. HESS. No, I don't believe so. I don't believe so. There may have been a case where the guard mentioned something to me, but whether that was prior to January 15, whether it was January 13 or January 17, I don't think that it did, no.

Mr. MARSHALL. Did the select committee spaces have a guard on duty 24 hours a day during that period of January 15 through January 30?

Ms. HESS. Yes.

Mr. MARSHALL. So that the select committee spaces were guarded by, to use your phrase, a warm body throughout that period; is that right?

Ms. HESS. Yes.

Mr. MARSHALL. With regard to the handling of classified documents or any notes which contained information containing classified documents, I believe you testified there was a clerk there to sign documents in and out; is that right?

Ms. HESS. OK, we are not talking about receipt of the documents from the agencies. We are talking about once they are in our possession.

Mr. MARSHALL. Yes, ma'am.

Ms. HESS. And the staffers want to use them. Yes, there was.

Mr. MARSHALL. Was that system in effect during the period January 15 to January 30?

Ms. HESS. Yes, it was.

Mr. MARSHALL. Were there any instances where that system did not work, that is, where you found evidence that classified documents or notes of classified documents had been utilized by members of the select committee or the select committee staff without going through the procedure of signing in and signing out those documents?

Ms. HESS. I'd say there were abuses of that system, yes.

Mr. MARSHALL. Many abuses?

Ms. HESS. My job was to believe that there were too many. I don't have an objective comparison based on CIA or anything else, because that was my job to be concerned about it. I think there were too many abuses.

Mr. MARSHALL. Did you complain to Mr. Field that the staff and the committee was not following the security procedures with regard to classified documents?

Ms. HESS. I complained all the time as I am sure they told you.

Mr. MARSHALL. Your answer then is yes?

Ms. HESS. Yes.

Mr. MARSHALL. This committee has heard testimony that toward the latter days of the committee, particularly during the period when the January 19 draft was being prepared, the draft of the select committee's report, and extending through the final report of January 23, 1976 that there were extreme time pressures on the committee and the committee staff, and that there were security violations during that period with regard to the internal control of classified documents.

Would you comment on that for us?

Ms. HESS. OK. I would say that by that time, which was, you know,

the compiling of the report, one could not call it a violation of existing security because security was changed at that point. Most of the compilation of documents was done in what we called one of the witness rooms, of which we had two. That is where most of the documents were taken from the secure area, and that is where they would be. That became the security. I knew that that is where they were.

I would go there frequently to see what was there, to make sure that someone was in the room with them. If someone wasn't there, I would take the documents back. The security system changed somewhat during that period from what it had been in the past.

Mr. MARSHALL. When you say the system changed, you mean simply people were allowed access to classified documents in that room, in the reading room, without having to sign in or sign out for them?

Ms. HESS. That is not my impression of what went on.

Mr. MARSHALL. Would you tell us what went on?

Ms. HESS. Basically there were three people working with those documents and working with the report, Mr. Field, Mr. Boos, and Ms. Sheketoff, and that they were almost exclusively the people who had access to the materials, and who dealt with them in the witness room.

Mr. MARSHALL. Was there any signing of the documents in and out of that room?

Ms. HESS. Yes, there was some, yes, there was.

Mr. MARSHALL. Did you find any instances in which documents were not signed for?

Ms. HESS. I don't remember. I have to suppose that I did.

Mr. MARSHALL. But you cannot recall any specific instance?

Ms. HESS. Nothing specific.

Mr. MARSHALL. You have before you a memorandum which you wrote to Mr. Field; is that correct?

Ms. HESS. Right.

Mr. MARSHALL. I want to ask the court reporter if he will identify that as an exhibit to this witness' testimony.

[The document referred to was marked Hess exhibit 1 for identification and appears at the end of Ms. Hess' oral testimony.]

Mr. MARSHALL. Directing your attention to that memorandum you will note that it is undated on its face.

Ms. HESS. Right.

Mr. MARSHALL. Can you give us an approximate date as to when you wrote that memorandum to Mr. Field?

Ms. HESS. I would say approximately the 3rd week in September.

Mr. MARSHALL. That memorandum complains, does it not, to Mr. Field that people are not following the security procedures?

Ms. HESS. Yes.

Mr. MARSHALL. Were the statements that you made in that memorandum correct to the best of your knowledge and belief at the time you made them?

Ms. HESS. Yes.

Mr. MARSHALL. Did that situation continue, that is where persons either on the staff or the committee members themselves were not following procedures set out for the handling of classified information?

Ms. HESS. It vacillated. It got better after the memo and then there were abuses again after a while.

Mr. MARSHALL. What sort of abuses were there?

Ms. HESS. One of the chief abuses was that, I must say without meaning to cast aspirations, that this abuse couldn't have occurred without the help of the agencies. The agencies took to giving documents to members of the staff to hand carry back. That was not the procedure that we agreed on, and I complained directly to the agencies about it. The procedure was that they were to have transmittal slips which were to list the materials, which were only to be receipted for by myself or Miss Andrade, and in that way the materials could come directly into the system and I would know exactly what we had and didn't have; but on repeated occasions the agencies would just give documents to whatever staffer happened to be investigating at their agency that day, and there was no assurance that I even knew of the existence of the document in our offices.

Mr. MARSHALL. Were there any other abuses of the security system that you described? I am trying to get an overall view of the time period in which you were with the committee and in charge of classified information.

Ms. HESS. There were sporadic abuses, where someone would neglect to sign for a particular document, or where it would be signed to their desk and they would walk away from the desk, where they weren't supposed to leave the document, and I would pass the desk and see no one there and take the document back.

I was out of the office a good deal in my position as research department director. I spent almost all of the time that we had hearings, I was up in the hearing room, and it is my impression that those were periods at which staffers particularly sort of swarmed back to the area to try to look in their own drawers and deal with documents more directly than I would have allowed if I were there.

Mr. MARSHALL. Who had the responsibility while you were not there?

Ms. HESS. The members of the research department who got a little intimidated at times, like usual.

Mr. MARSHALL. Did the document control clerk perform satisfactorily, that is the person in charge of signing documents in and out of secure areas?

Ms. HESS. At times.

Mr. MARSHALL. Excuse me?

Ms. HESS. At times.

Mr. MARSHALL. And at other times?

Ms. HESS. No.

Mr. MARSHALL. Did you make any complaint of this and the other abuses that you talked about to Mr. Pike, the chairman of the committee?

Ms. HESS. Yes, I did.

Mr. MARSHALL. What action was taken on your complaint?

Ms. HESS. None that I was aware of.

Mr. MARSHALL. Was there any discussion with Mr. Pike as to what action should be taken?

Ms. HESS. Yes.

Mr. MARSHALL. Could you tell us about that, if you can?

Ms. HESS. We had a situation where there were 5 months and 30 people to do a job that could have taken 5 years and 300 people. We had someone who was—I certainly never had the last word on author-

ity. In that way I was not head of security but I did have a good deal of the day-to-day responsibility for seeing to it that what turned out to be 77,000 documents, confidential, secret, and top secret, remained secure. I had no experience coming to the job. What I had was a willingness to do, you know, a good job and to work hard at it. That system was very labor intensive, system intensive. It relied a great deal on pep talks with the staff and trusting the staff, knowing who they were and how they would perform with these documents.

It was relied on, the fact that we had a very small area, that was reasonably easily patrolled by myself and by other members of the research department.

It was my impression, after speaking with Mr. Pike, that it was his impression that this was something that should be handled at the staff level, that this was something that Mr. Field should take care of.

For the first couple of months we had almost weekly staff meetings, and at the end of the meeting, Searle would turn the meeting over to me and I would yell and scream about security, and it usually worked. People usually did make an effort to comply.

What you had was 30 people who did not have a whole lot of prior experience dealing with classified documents. I don't feel they had any malicious intent throughout to mishandle the documents. I really don't think so.

I think they all had a lot, as did I, a lot of lack of experience and we did the best we could.

That being the case, when I said before how much abuse was there, that being the case, there was surprisingly little abuse, taking all of those things into account, taking into account that Rayburn is not the CIA and that the whole area is obviously not as secure as one might like.

Mr. MARSHALL. Following the first few months that you described, when you were at the staff meetings and would get up and caution everyone to be sensitive to security for classified documents, was there a time when your cautions were not adhered to, or when the system of cooperation among the staff with regard to classified information broke down?

Ms. HESS. There were definitely certain periods that one could count on, when it would be more prone to break down, when a particular staffer was preparing a particular hearing dealing with a good many documents, and the day of that hearing that staffer was usually pretty frantic, and did not like to take the time to sign for all of the documents, did a lot of running in and saying "I have to have this, that, and the other thing and I have to have it now and I have to have it in the hearing room."

Now signing things to a hearing room was already a little bit different than just signing them out to your desk and also took time. We cooperated to the extent that we could.

If there was a breach in that the staffer said "I need these now" and ran out of the room, I would go to the hearing room and copy down what documents they had and bring it back downstairs.

Does that answer your question?

Mr. MARSHALL. Was there some difficulty about your referring to yourself as security officer?

Ms. HESS. Yes. That came up specifically several times.

Mr. MARSHALL. Would you tell us about that?

Ms. HESS. It came up whenever there was a question of a formal introduction. For instance, when the CIA inspected our premises, Mr. Field was insistent that I not be introduced as the security officer. At some point there were some pictures taken by the press, and a member of the press called to verify my title, and again I discussed it with Mr. Field who said "Do not refer to yourself as the security officer." In his mind that meant somebody was packing a six-gun is what he said, and I didn't fit the bill.

It was clear to me within the first few months that I was not to be considered a security officer.

Mr. MARSHALL. With regard to the drafts of the select committee reports, the first draft being January 19, 1976, did you have responsibility for security of those drafts?

Ms. HESS. No.

Mr. MARSHALL. Who had that responsibility?

Ms. HESS. I'd say most of the responsibility fell directly to Mr. Field and to Ms. Sheketoff.

Mr. MARSHALL. In other words, your responsibilities were limited then strictly to the security of the classified documents or any copies of classified documents and not to the select committee's report itself; is that a fair statement?

Ms. HESS. I would say that is the way it worked out, yes.

Mr. MARSHALL. Did you assist in the distribution of any part of the select committee report to members or staff?

Ms. HESS. Infrequently I may have. I may once or twice have run some pages up to a few offices. It was not something I did very much.

Mr. MARSHALL. As security officer, if I may use that term in referring to you, were you concerned that the report, the January 19 draft of the select committee's report or any changes to that draft contained classified information?

Ms. HESS. I was concerned, yes.

Mr. MARSHALL. Did you voice that concern to any member of the staff or to any member of the committee?

Ms. HESS. Yes, I did.

Mr. MARSHALL. Tell us about that, please.

Ms. HESS. They were very short, short conversations, mostly with Mr. Field, not on very many occasions. The policy was set forth by him very clearly at the beginning.

Mr. BENNETT. What was that policy that was set forth?

Ms. HESS. The policy that had to do with me was that I was not responsible for the security of the report, and I was not to assume that it was within my ongoing security operation. That is the policy I am referring to.

Mr. MARSHALL. What was the concern specifically that you expressed to Mr. Field?

Ms. HESS. When the documents first began to be taken from the area to the witness room. I was very edgy. As it turned out, that turned out not to be a problem. It just didn't work out to be a problem, but when it first started I said, you know, "Before you get any more you have to bring back what you already have." and stuff like that, and he would say, "Well, we need all of this. This is absolutely what we need."

They also needed to do some physical altering it seems to me of documents where they were doing some cut and paste work and I was concerned that they not cut up my original documents that they knew I was going to have to give back in 2 weeks. I expressed those kinds of concerns.

Mr. MARSHALL. Were these concerns that you voiced with Mr. Field that he said were not to be your concern?

Ms. HESS. What he said basically was that the witness room is secure, when I talked about that, and that nobody will walk out of this office with documents; so you will not lose your documents, that they will get back to you as soon as we can get them back to you; that it is true, we need to work with a greater number of documents than we had at one time before, and to try to understand that, and we worked out a system pertaining to this cut and paste business of making a working copy of the document, so that I could take the original back.

We spent a good deal of time making working copies that they could then cut and paste, so that I could have the original intact.

Mr. MARSHALL. When we talk about these documents in the reading room, as you testified, we are talking about documents ranking from secret to higher classifications?

Ms. HESS. In the witness room?

Mr. MARSHALL. Yes, ma'am, the reading room.

Ms. HESS. No; the reading room was the secure area.

Mr. MARSHALL. But were some of those documents top secret documents or secret documents?

Ms. HESS. Oh, yes.

Mr. MARSHALL. With regard to copies made of those documents, who supervised that?

Mr. LENZNER. Mr. Marshall, I think you were referring to when the materials were removed from Ms. Hess' room where the researchers were to the witness room. That is what the question was directed at?

Mr. MARSHALL. Yes.

Ms. HESS. My room was the reading room. The other room was the witness room.

Mr. MARSHALL. Let me be clear.

The documents that were transferred from your room, the reading room, to the witness room—

Ms. HESS. Right.

Mr. MARSHALL [continuing]. Were these secret documents, top secret documents?

Ms. HESS. Some of them were.

Mr. MARSHALL. Both classifications?

Ms. HESS. Yes.

Mr. MARSHALL. Was it those documents that Mr. Field said that he needed to work with to prepare the report?

Ms. HESS. Yes; those were the documents. He did not elaborate with me as to what extent those documents were being used. I have no knowledge since I have not read the report, as to whether those documents showed up in the report or not. It could have been that he was reading them to put in his own mind the context within which he was then going to write a declassified version. I simply don't have direct knowledge.

Mr. MARSHALL. Who controlled copies that were made of those classified documents?

Ms. HESS. They were treated, any copy was treated, with the same classification as its original.

Mr. MARSHALL. Was there a control of the number of copies that were made, to your knowledge?

Ms. HESS. In theory.

Mr. MARSHALL. Excuse me?

Ms. HESS. In theory. We did have a—

Mr. MARSHALL. That suggests something else in practice. Give us whatever personal or direct information you may have on that point.

Ms. HESS. I never saw anyone personally abuse the Xerox machine, but it is my guess that that system of writing everything that you made copies of may not have been religiously adhered to throughout.

Mr. MARSHALL. Was there a log kept on the Xerox machine to determine who was making copies of what and the number of copies that were made?

Ms. HESS. Yes; there was.

Mr. MARSHALL. Do you recall what happened to that log?

Ms. HESS. I believe it is with our committee materials in the Archives, I believe.

Mr. MARSHALL. Whose responsibility was it to keep that log?

Ms. HESS. Miss Andrade's.

Mr. MARSHALL. Were there any other difficulties with securing classified materials other than what you have already told us about?

Ms. HESS. Trouble securing them from the agencies?

Mr. MARSHALL. No, ma'am. Strike that.

It is a foolish question.

Was there any other difficulty in maintaining the security of classified information other than what you have already told us about that you experienced as the security officer?

Ms. HESS. There were problems, but I think most of them wound up being solved. For instance, we would have to provide 16 copies of any classified document that was to be considered in a hearing, 13 for the members of the committee, one for Mr. Field, one for Mr. Boos, and one for Mr. Donner. They were all up in a hearing room that had people who did not have adequate classification to see them.

I sat in the hearing room and attempted, whenever anybody got up, to make sure no one got to the materials, or as soon as the hearing was over, to clean them all up. I mean that was a problem. It was a problem that I didn't think ever had any bad results. I don't think any documents were ever leaked that way.

Mr. MARSHALL. With regard to the safe combinations, you stated that you had the combinations written down some place.

Ms. HESS. Yes; I did.

Mr. MARSHALL. Where was that kept?

Ms. HESS. I kept a copy of the correct, of the real numbers, in my wallet, and Miss Andrade had a copy of the real numbers. There was a coded copy of the numbers. It was in a wallet that was not with me. I mean it was secure elsewhere. It wasn't like a pocketbook wallet, that kind of thing. There was a copy of the combinations outside of the office in a secured safe.

Mr. MARSHALL. Is that the one in the wallet in the secured safe?

Ms. HESS. I am sorry. Yes, it went out, some times it was in. It was with me. I had a copy. I also had a copy that was kept in the office at all times. I am trying to make the distinction between the copy that was in the office at all times and the one that moved. The one that was in the office was coded geometrically, because it was kept in my desk, and if anybody had happened to be going through my desk and saw it, I didn't want them to be tempted, so that was coded, so if I looked at the numbers I knew which numbers to turn, but they weren't the real numbers.

Mr. MARSHALL. Did anyone else have access to the code besides yourself?

Ms. HESS. No, and Miss Andrade had the real numbers herself. I don't know where she kept her copy.

Mr. MARSHALL. Looking at the real numbers put on paper for the combination, where were those kept?

Ms. HESS. With me.

Mr. MARSHALL. In your personal possession?

Ms. HESS. Yes; they changed throughout because the combinations changed. I changed the combinations on the safe two or three times in the course of the committee's existence, and each time there was a change of where I kept the combination.

Mr. MARSHALL. Looking at the time period of January 15 through January 30, during that time period, had there been a change in the combinations?

Ms. HESS. Between January 15 and January 30?

Mr. MARSHALL. Yes, ma'am.

Ms. HESS. I don't believe so, but there was a change made in January. I believe it was in January. I don't think it was at the end of January. I think it was at the beginning.

Mr. MARSHALL. And were those changed combinations handled in the same way, that is the coded copy at your desk, and then a real numbered copy in your personal possession?

Ms. HESS. That is right.

Mr. MARSHALL. And again Miss Andrade was the only other person who had access to that?

Ms. HESS. That is right.

Mr. MARSHALL. Did any member of the news media ever contact you, either at your home or at your office, to seek to obtain a copy or a draft of the select committee's report from you?

Ms. HESS. John Crewdson, of the New York Times, called my home three times, I believe, asking to be given the report.

Mr. MARSHALL. Did you know Mr. Crewdson before he called the first time?

Ms. HESS. Yes; I was the one who dealt with the press for the committee, too, any time we had to give out anything we were distributing. I was the one who did it, so I knew Mr. Crewdson that way.

Mr. MARSHALL. When did the first telephone call come from Mr. Crewdson?

Ms. HESS. I don't remember the exact date. There were two before the committee voted to release the report, and one immediately after, so I would say that was in a period of a week and a half before the committee's vote, and then 2 days after the committee's vote.

Mr. MARSHALL. The committee voted on January——

Ms. HESS. I didn't mean committee, I meant the full House; I am sorry.

Mr. MARSHALL. The full House voted on January 29, 1976, to keep the report secret.

Where were the telephone calls from Mr. Crewdson in relation to that date?

Ms. HESS. The two prior to it were in the week and a half prior to the 29th, and the other one was maybe the 30th.

Mr. MARSHALL. Would you tell us, beginning with the first telephone call, what he said to you and what you said to him, in the telephone calls?

Ms. HESS. He asked if I would give him the report, and I said no. He explained at some point that everyone already thought that they had a copy of the report, so he felt that this lessened my or anyone's liability in the matter.

He offered to meet me at any place of my designation if I would, you know, want to provide it to him, and I said: "You're crazy. I am the security person. You are talking to the wrong one."

Mr. MARSHALL. I take it you did not give the copy of the report to Mr. Crewdson.

Ms. HESS. No.

Mr. MARSHALL. Did you give any portion of the report to Mr. Crewdson?

Ms. HESS. No.

Mr. MARSHALL. What about subsequent telephone calls? Was it the same sort of thing discussed, or was anything in addition discussed?

Ms. HESS. The only thing that was different was after the full House vote, which was met with mixed reactions, he called and said in light of the full House vote, have you changed your mind, and I said no.

Mr. MARSHALL. Did Mr. Crewdson ever indicate to you or state to you that he had a copy of the report?

Ms. HESS. No, he just said that people thought he had a copy, but that he in effect did not.

Mr. MARSHALL. In the New York Times article of January 26, 1976, did it come to your attention in which Mr. Crewdson in a byline to the story said that the New York Times had a copy of the report?

Ms. HESS. Unfortunately, I didn't read the article; I am sorry.

Mr. MARSHALL. That article was never brought to your attention?

Ms. HESS. No.

Mr. MARSHALL. Did you have any other conversations with Mr. Crewdson, other than what you have already testified to?

Ms. HESS. No.

Mr. MARSHALL. Did other newsmen or media people contact you, to request that you make a copy of the report available?

Ms. HESS. No.

Mr. MARSHALL. Did you ever see any members of the media within the select committee space?

Ms. HESS. Yes, I did. The ones who followed the hearings very closely would frequently come down, especially to the reception area, and sometimes would even request to go beyond the reception area. They had to have an escort, but in the reception area their presence was quite frequent and involved dozens of them, I would say.

Mr. MARSHALL. During the period January 15 through January 30, did you see any newsmen within the select committee space in that time?

Ms. HESS. In the reception area, but I don't recall seeing any beyond that.

Mr. MARSHALL. Was the reception area within the area that the security guard was guarding?

Ms. HESS. Yes.

Mr. MARSHALL. Or was that outside of the secured area?

Ms. HESS. No, the security guard sat in the reception area.

Mr. MARSHALL. You saw news persons pass the security guard?

Mr. LENZNER. Are you talking now about January 15 through 30?

Mr. MARSHALL. Yes.

Ms. HESS. Go out of the reception area into the office space?

Mr. MARSHALL. Yes, ma'am.

Ms. HESS. I don't recall any.

Mr. MARSHALL. Did you ever see Mr. Schorr at any time, Daniel Schorr, within the select committee space?

Ms. HESS. Yes.

Mr. MARSHALL. Would you tell us when that was and where he was?

Ms. HESS. He was there frequently, especially in the reception area, but I would say once or twice he was escorted back to either—he wanted to question Mr. Field directly or Mr. Donner directly.

Mr. MARSHALL. Were those the persons he was there to see insofar as you knew?

Ms. HESS. Yes.

Mr. MARSHALL. Did you see him on more than one occasion?

Ms. HESS. I would say so, yes.

Mr. MARSHALL. Do you recall any specific dates?

Ms. HESS. No.

Mr. MARSHALL. Or rough time periods?

Ms. HESS. I really don't.

Mr. MARSHALL. What about between January 15 and January 30, do you recall seeing Mr. Schorr within the select committee space during those days?

Ms. HESS. No, I don't.

Mr. MARSHALL. Do you recall a conversation with Congressman Treen on or about January 19, 1976 concerning a counting of the staff copies of the select committee's report?

Ms. HESS. It wouldn't surprise me that that is one of the things we talked about. Mr. Treen and I talked on several occasions in December and January, three or four times he called to his office and was concerned about security, and it is very possible that we talked about staff copies of the report.

Mr. MARSHALL. As I understand your testimony, your responsibilities really dealt with the security or maintaining security of classified documents, and not with maintaining security of the select committee report or drafts; is that correct?

Ms. HESS. I had very little to do with the report. I really wish I could help you more in this whole thing, but I really had very little to do with the report.

What we had was about 2 weeks to return 77,000 classified documents. My staff by that time was being used for the report, for typing

and other clerical purposes. They were not being used to help me prepare the documents for return to the agencies. Almost all of my attentions and activities in this time period that we are broadly speaking about had to do with organizing for return to the agencies the 77,000 documents.

Mr. MARSHALL. Let me ask you this: Was there any one of the 77,000 documents that you were unable to return?

Ms. HESS. No.

Mr. MARSHALL. Every one of them you accounted for.

Ms. HESS. That is right. Yes, that is my opinion. There was only one allegation from one agency that documents were missing, and we were allowed to go out that day and found them all, so I would say that I returned them all.

Mr. MARSHALL. To that extent I take it you would describe security as successful with regard to accounting for the documents that came in.

Ms. HESS. I would have to say so, yes.

Mr. MARSHALL. Ms. Hess, Mr. Daniel Schorr has stated in the article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report or a draft of the report of January 25, 1976.

Did you give the select committee report or a draft of the report or the text of any part of the report or the draft to Mr. Schorr or to any other person?

Ms. HESS. No, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Ms. HESS. No, I don't. I wish I did.

Mr. MARSHALL. Do you have any knowledge whatsoever of circumstances surrounding the publication of the select committee report or a draft of the report or a text of that draft or a report?

Ms. HESS. I have no knowledge. I just heard rumors.

Mr. MARSHALL. Excuse me?

Ms. HESS. I just know the rumors.

Mr. MARSHALL. When you say you just know the rumors, what are you referring to?

Ms. HESS. What I read in the paper mostly.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. HESS. No, I don't.

Mr. MARSHALL. Did you give the select committee report or make any part of the select committee report or make any part of the draft of the select committee report available to anyone outside of the Select Committee on Intelligence?

Ms. HESS. No, I don't.

Mr. MARSHALL. Do you know of anyone who did?

Ms. HESS. No.

Mr. MARSHALL. Those are all my questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. I take it that although you might have conceived originally that you would have to do with the total security, eventually it became clear to you, from your talks with the director, Mr. Field, that your security aspects were primarily to see that the documents, the secret documents, things like that, which you got, were to be secure, not burglarized, and would be returned to the proper agency.

Ms. HESS. That is correct; yes.

Mr. BENNETT. And as a matter of fact as far as you know, you did a 100-percent job in that.

Ms. HESS. Right.

Mr. BENNETT. They all got back as far as you know.

Ms. HESS. Right.

Mr. BENNETT. And I take it you didn't really think it was your responsibility, after the conversations you had with those above you, that it was your responsibility to see that top secret and secret material didn't find its way into the report of the committee without clearance with somebody who had the right clearance.

Ms. HESS. Definitely, I would not have the authority to do that.

Mr. BENNETT. Thank you.

I have no further questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. Do you have further questions, Mr. Marshall?

Mr. MARSHALL. No; I don't.

Mr. FLYNT. Ms. Hess, the committee thanks you for the testimony which you have given us and we also wish to express the thanks of the committee to Mr. Lenzner for accompanying you to the witness chair.

Mr. LENZNER. Thank you, Mr. Chairman.

Mr. FLYNT. You may be excused.

[The following memorandum, previously referred, was received for the record:]

MEMORANDUM

To: Searle.

From: J. Hess.

cc. All staff.

Re: Procedure.

1. It is my considered opinion that, as staffers persist in xeroxing multiple copies of all memos and briefing summaries they've done, regardless of classification, it makes no sense to continue to deliver the original typed copies to my department. Since your decision has been thus far that staffers may keep personal files if necessary, and since all staffers have deemed it necessary to keep such files, plus the compilation of a private "central file" by one staffer, it merely wastes the time of this department and the energy of the secretarial staff, to attempt to keep copies at a minimum. I suggest that all staffers be given the original typed copies initially. If they then, in the spirit of total cooperation which has been hithertofore exhibited in a way inferior only to the New York World's Fair, decide to include the central files in one of their massive lists of xeroxed copies to be made, I would handsomely appreciate it.

2. The informality, otherwise known as flexibility, which has characterized the document control system thus far has come to an inauspicious end. Effective immediately, no staff member will have personal access to the files. Up until now, it seemed reasonable to allow staffers to dip into their project drawers to pull their notes. Any more formal system would have been, and has been, before the fact, strongly protested. However, staffers have exhibited (a) a strong resistance to signing for their notes and (b) a propensity for pulling other documents as well. It then strikes me as peculiarly audacious, besides simply peculiar, that staffers have taken to complaining that they can't find their notes in their drawers and somehow expect the department to have knowledge of their whereabouts. Simply, you can't have it both ways. Therefore, no one is to "dip" into his/her drawer

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and everything, including notes, will be signed for. If this is not satisfactory, I suggest some receptacle for personal notes other than this department. We simply cannot be held responsible for documents which are held to be outside of the realm of document control.

This includes documents which are signed for, or brought from an agency, by staff members and kept at their desks because they "simply have to use them". My being verbally informed of the receipt of documents does not constitute turning them over to the files for protection.

3. Procedure for requesting documents :

A. Call Herb Brooks on 7.

B. Brooks will call your desk when documents are ready.

C. For "Problems" call Hess on 46.

Mr. FLYNT. The next witness before the committee is scheduled to be Ms. Josephine Scheiber, who is present, but counsel who desires to accompany her at the hearing and whom Ms. Scheiber desires to accompany her at the hearing has not yet arrived, but is expected momentarily.

The committee will stand in informal recess hopefully to reconvene in about 5 minutes.

[Short recess.]

Mr. FLYNT. The committee will come to order.

The committee is in open session, a quorum is present for the purpose of taking testimony and receiving evidence.

Our next witness is Ms. Josephine Scheiber, whom the committee welcomes.

Ms. Scheiber, we understand you are accompanied by counsel, Mr. Speiser.

Mr. SPEISER. I am Lawrence Speiser, and I am representing Ms. Scheiber.

Mr. FLYNT. Thank you, Mr. Speiser. We welcome you before the committee.

Mr. SPEISER. Thank you.

Mr. FLYNT. Ms. Scheiber, please stand and let me administer the oath.

You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. SCHEIBER. I do.

Mr. FLYNT. Thank you and you may be seated.

TESTIMONY OF JOSEPHINE SCHEIBER, FORMER EDITOR, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY LAWRENCE SPEISER, COUNSEL

Mr. FLYNT. Counsel, you may proceed.

Mr. MARSHALL. Ms. Scheiber, could you state your full name for the record, please?

Ms. SCHEIBER. Josephine Scheiber.

Mr. MARSHALL. You are appearing here at the invitation of this committee?

Ms. SCHEIBER. That's right.

Mr. MARSHALL. Ms. Scheiber, prior to the hearing you have received copies of House Resolution 1042 and 1054?

Ms. SCHEIBER. Yes.

Mr. MARSHALL. As well as copies of the rules of this committee, the investigative procedures adopted by this committee and a copy of Chairman Flynt's opening statement?

Ms. SCHEIBER. We have.

Mr. MARSHALL. Do you have a written statement which you wish to make to the committee?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Do you have an oral statement which you wish to make before the committee?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Now, have you produced for the staff of this committee and for the committee all copies of any documents that you may have in your possession relating to the work of the Select Committee on Intelligence?

Ms. SCHEIBER. I have none, other than printed hearings.

Mr. MARSHALL. Excuse me?

Ms. SCHEIBER. The only documents I have are printed hearings.

Mr. MARSHALL. Are they public hearings?

Ms. SCHEIBER. Yes.

Mr. MARSHALL. Now, in the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information, or information which may tend to defame, degrade, or incriminate any person, would you please bring that to the attention of this committee so it may take timely and appropriate action under the Rules of the House of Representatives?

Ms. SCHEIBER. Yes.

Mr. MARSHALL. Ms. Scheiber, what was your job title and what were your duties on the House select committee staff, that is the Select Committee on Intelligence?

Ms. SCHEIBER. My job title was committee editor and my duties were primarily helping to prepare hearings for the GPO.

Mr. MARSHALL. Now, when did you come to work for the select committee?

Ms. SCHEIBER. I started, I don't know the specific date; it was the day after Labor Day of 1975.

Mr. MARSHALL. When did your duties terminate?

Ms. SCHEIBER. My duties terminated the 26th of March, 1976.

Mr. MARSHALL. Now, could you give us, in somewhat greater detail, exactly what your duties involved as editor for the select committee.

Ms. SCHEIBER. The bulk of my time was spent on preparing hearings, as I said, for the GPO. This consisted, first of all, of making certain that none of the witness corrections involved substantive changes. And second of all, getting together materials for the appendixes.

Mr. MARSHALL. Did you have some duties in connection with the preparation of the select committee report or drafts of that report?

Ms. SCHEIBER. I did some editing on the final report and I did some of the work on footnotes, which was filling in correct page numbers from the printed hearings, and making certain that the quotations from the printed hearings were correct.

Mr. MARSHALL. This committee has heard testimony that the first

draft of the select committee's report was the draft distributed on January 19, 1976. Do you recall whether you received a copy of that draft of the select committee's report?

Ms. SCHEIBER. I don't believe I saw that report.

Mr. MARSHALL. This would have been the initial draft.

Ms. SCHEIBER. Right.

Mr. MARSHALL. Now, did you receive a subsequent copy or a changed copy of the January 19 draft?

Ms. SCHEIBER. No.

Mr. MARSHALL. Did you receive a copy of the January 23, 1976 draft?

Ms. SCHEIBER. Yes.

Mr. MARSHALL. Now, when did you get that copy?

Ms. SCHEIBER. I believe it was on Saturday—the 23d was Friday?

Mr. MARSHALL. Yes, ma'am.

Ms. SCHEIBER. I believe it was Saturday, the 24th.

Mr. MARSHALL. Where were you when you got the copy?

Ms. SCHEIBER. In the committee offices.

Mr. MARSHALL. Now, were you given some instructions with regard to what you were to do with that copy?

Ms. SCHEIBER. Well, I knew that my job on that was to iron out some of the writing and to check the footnotes for accuracy.

Mr. MARSHALL. Now, did you do that within the select committee spaces?

Ms. SCHEIBER. I started to do it within the select committee offices, and then it was suggested that it would be more expeditious, because we were up against a time gun, if I took it home, and worked on it there.

Mr. MARSHALL. Who suggested that, do you recall?

Ms. SCHEIBER. Yes, that was Emily Sheketoff.

Mr. MARSHALL. Did you take the draft of January 23, 1976, home with you?

Ms. SCHEIBER. Yes, I did.

Mr. MARSHALL. And when did you return it to the select committee offices?

Ms. SCHEIBER. Monday morning.

Mr. MARSHALL. Did you turn it over to a particular person?

Ms. SCHEIBER. To Ms. Sheketoff.

Mr. MARSHALL. Now, during the time you had the draft of January 23, 1976, or when you took it outside of the select committee spaces, did anyone else have access to that draft other than yourself?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Where did you keep the draft when you took it outside of the committee spaces?

Ms. SCHEIBER. It was in my apartment.

Mr. MARSHALL. Was it kept in your personal possession at all times?

Ms. SCHEIBER. Yes, sir.

Mr. MARSHALL. Were any copies made of the January 23 draft you had taken outside of the select committee offices?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Did you have any discussion with anyone other than Ms. Shetakoff about getting permission to take that draft home with you?

Ms. SCHEIBER. No. Because she was acting as Searle Field's surrogate, if I am using that word correctly.

Mr. MARSHALL. That is a good legal word.

Mr. SPEISER. I think that is right.

Mr. MARSHALL. What sort of work did you do on the draft? For example, did you make pen and ink corrections or punctuation corrections on the face of the draft, or how did you work with the draft?

Ms. SCHEIBER. Probably I worked with pencil, I am sure I worked with pencil, and in some places I did considerable editing, and the footnotes were fairly SOP; it was finding where the quote was in the printed hearing, filling in the correct page numbers, and making sure that the quotes were accurate.

Mr. MARSHALL. Did you have to consult with anyone to do this work?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Was the editing you describe done on the face of the draft or on a piece of paper?

Ms. SCHEIBER. No, it was done on the draft itself.

Mr. MARSHALL. So, in effect, the draft was marked up by you over the course of the weekend, is that right?

Ms. SCHEIBER. Pretty well, yes.

Mr. MARSHALL. Have you had occasion to look at the Village Voice editions of February 16 and February 23?

Ms. SCHEIBER. I briefly looked at the first one, and I don't believe I have looked at the second one.

Mr. MARSHALL. Did you, were you able to reach any judgment as to whether the version of the select committee report or portion of the report and the February 16 edition that you looked at reflected the changes that you had made in the editorial process?

Ms. SCHEIBER. No, they did not.

Mr. MARSHALL. They did not?

Ms. SCHEIBER. No.

Mr. MARSHALL. Could you tell us, what is the basis for that judgment on your part?

Ms. SCHEIBER. Well, just—I remember very vividly some of the editorial changes that I suggested, which were accepted by Mr. Field, and were not included in the Village Voice version.

Mr. MARSHALL. Do you know of anyone else who took a copy of the January 23 draft outside of the select committee spaces during the time between January 23, January 26?

Ms. SCHEIBER. I would have no knowledge of that.

Mr. MARSHALL. At the time you took it you knew of no one else who would be working that weekend at home on the draft?

Ms. SCHEIBER. No. I just would have no knowledge of that.

Mr. MARSHALL. When you got back to the offices on January 26 you made no comparison of the changes you had made with changes anyone else had made at the same time?

Ms. SCHEIBER. No.

Mr. MARSHALL. Do you have any idea how many changes resulted from the editing suggestions that you made? That is changes that were reflected in the final report.

Ms. SCHEIBER. How many by number?

Mr. MARSHALL. Just roughly, are we talking about a few, or are we talking about 10 or more or what?

Ms. SCHEIBER. I would say 10 or more.

Mr. MARSHALL. Ten or more.

Ms. SCHEIBER. But I could not be specific.

Mr. MARSHALL. Were these changes which, in your judgment, were substantial changes, or simply stylistic changes?

Ms. SCHEIBER. They were not substantive.

Mr. MARSHALL. I realize that it is highly difficult to make judgments.

Ms. SCHEIBER. No, they were not substantive.

Mr. MARSHALL. They were not, they were just stylistic changes.

Ms. SCHEIBER. That's right.

Mr. MARSHALL. Do you happen to recall any changes that you made or suggestions for changes that you made with regard to page 198 and 199 of the report? I know that is difficult but——

Ms. SCHEIBER. I don't know.

Mr. MARSHALL. Excuse us just a moment.

Ms. SCHEIBER. Yes.

Mr. MARSHALL. We will come back to that.

Let's go on with the questioning.

Ms. SCHEIBER. Right.

Mr. MARSHALL. Daniel Schorr has stated in an article in the Rolling Stone of April 8, 1976, that he had possession of the select committee report on January 25, 1976.

Now, did you give a copy of the select committee report or a draft of the report, or text from either the draft or the report to Mr. Schorr or to any other person?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Do you have any information whatsoever of the circumstances surrounding the publication of the select committee report or any part of that report, or any part of the draft?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. SCHEIBER. I do not.

Mr. MARSHALL. Did you give the select committee report or make any part of the Select Committee report or a draft of the report available to anyone outside of the Select Committee on Intelligence?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHEIBER. I do not.

Mr. MARSHALL. Excuse us, please.

Ms. SCHEIBER. Yes.

[Short pause.]

Mr. BENNETT. Could I ask a question while you all are doing that?

Where is the copy you did mark up? Where is it now?

Ms. SCHEIBER. I assume it's in the Archives.

Mr. BENNETT. Wouldn't that help? There is an interest in those two pages.

Ms. SCHEIBER. Yes, I am waiting to see what it is.

Mr. BENNETT. Well, if you could identify the subject matter of those two pages, that might help her recollection, but since she says they

were stylistic changes, she is not going to remember it, if it's just stylistic, in all probability.

But it is somewhat important. And if your paper is in the Archives, and you did make corrections on those pages, it may be pertinent. You might see your handwriting on it.

Mr. MARSHALL. Mr. Bennett, I would state for the record our investigators have looked at the Archives and there are no documents with editorial changes in the Archives.

Mr. BENNETT. Have you asked her what she did with her copy?

Mr. MARSHALL. She said she turned it over to Ms. Sheketoff, in her testimony. If we had had the copy we would have produced it for the witness.

Mr. BENNETT. If I could think of the proper French phrase I would say it. *C'est la vie* is the best I can do.

Mr. FLYNT. Ms. Scheiber, I will address a question to you, if you may be the appropriate person to answer it.

How many of the copies were shredded?

Ms. SCHEIBER. How many of the copies of the printed report?

Mr. FLYNT. Yes.

Mr. SWANNER. No, no, of the draft report.

Ms. SCHEIBER. I have no idea of that.

Mr. FLYNT. You didn't shred any of them?

Ms. SCHEIBER. No, I didn't.

Mr. BENNETT. Isn't it worthwhile reading the pages 198 and 199 to her?

Mr. MARSHALL. That is what we are doing right now, sir. We are getting them.

[Short pause.]

Mr. FLYNT. Mr. Bennett, do you have other questions while we are awaiting production of the two pages?

Mr. BENNETT. It would be helpful if I did. But I don't.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. I don't have any questions.

Mr. FLYNT. Mr. Mitchell does.

Mr. MITCHELL. I do, Mr. Chairman. I just want to get straight on the chronology. What was the date you took the report home to do your editing, roughly?

Ms. SCHEIBER. I think it was the 24th.

Mr. MITCHELL. The 24th?

Ms. SCHEIBER. That's right.

Mr. MITCHELL. And you stated that the version in the *Village Voice* contained or did not contain a lot of your editing?

Ms. SCHEIBER. That's right, it contained none.

Mr. MITCHELL. So, you have concluded, or a reasonable person could have concluded, that that report was given prior to the date you completed your editing?

Ms. SCHEIBER. That's right.

Mr. MITCHELL. You say your editing version became the final report?

Ms. SCHEIBER. Oh, it became a very small part of the final report.

Mr. MITCHELL. Thank you.

Mr. MARSHALL. Ms. Scheiber, I am going to ask a member of our staff to show you pages 198 and 199 of the report, and ask you to look

at them, and see if you recall any changes that you made over the weekend that you have testified about in those pages, if you can?

[Short pause].

Mr. MARSHALL. And I would ask you not to refer to the substance of the report, but just if you will give me a "yes" or "no" to the question, and then we will determine further.

Ms. SCHEIBER. This is in the second volume and I did virtually no work on that. I got into that very little.

Mr. MARSHALL. Can you testify specifically, if you recall, whether you made any changes on those two pages, or either of them?

Ms. SCHEIBER. I doubt that I did.

Mr. MARSHALL. You don't think that you did. Is that the best answer you can give us based on your present recollection?

Ms. SCHEIBER. Yes, that is right.

Mr. MARSHALL. All right, would you take the pages back, please? Do you know Mr. Schorr, Ms. Scheiber, have you met him?

Ms. SCHEIBER. Yes, I have.

Mr. MARSHALL. Did you know him prior to your work on the select committee?

Ms. SCHEIBER. That's right.

Mr. MARSHALL. Did Mr. Schorr ever contact you at any time while you were with the select committee and ask you for information about the select committee's activities?

Ms. SCHEIBER. No, sir; he did not.

Mr. MARSHALL. During the weekend of January 23 through the 26, the time that you had the draft of the select committee report in your possession as you have testified, did you have any conversation or other contact with Mr. Schorr or anyone acting on his behalf?

Ms. SCHEIBER. No, sir.

Mr. MARSHALL. Insofar as you knew they were acting?

Ms. SCHEIBER. No, sir.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions, Mr. Chairman.

Mr. FLYNT. Ms. Scheiber, because of the nature of the contents of these two pages I do not intend to go further into any line of questioning with regard to pages 198 and 199.

There being no further questions, Ms. Scheiber, the committee wishes to thank you and Mr. Speiser for your appearance before the committee, and with the thanks of the committee you may step down.

Ms. SCHEIBER. Thank you, Mr. Chairman.

Mr. FLYNT. You are appearing under subpoena?

Ms. SCHEIBER. That is right.

Mr. FLYNT. You are released from your subpoena.

Ms. SCHEIBER. Thank you.

Mr. FLYNT. We do not anticipate that we will have any further need to recall you. If we do, you will be notified as far in advance as pos-

sible, and we will do our utmost to select a time for your appearance that will be as convenient to you as possible.

Ms. SCHEIBER. Thank you, Mr. Flynt.

Mr. SPEISER. Thank you.

Mr. FLYNT. You are released from the subpena and we thank both of you for your appearance.

The committee will recess and stand in recess subject to the call of the Chair. The Chair is unable to set an exact time or an approximate time at which the committee will reconvene, but the Chair will make every effort to notify the members of the committee at least 15 minutes before we reconvene.

The committee stands in recess.

[Whereupon, at 5:30 p.m. the committee recessed.]

Mr. FLYNT. The committee will come to order.

The committee is in open session.

Without objection, the committee will adjourn.

[Whereupon, at 6:16 p.m., Thursday, July 29, 1976, the committee adjourned, to reconvene at 10 a.m., September 8, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

WEDNESDAY, SEPTEMBER 8, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to notice at 10 a.m., in room 2212, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Teague, Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John T. Marshall, legal counsel; David Bowers, investigator; John W. Marshall, investigator; Jay Jaffe, assistant to the staff director; Jan Loughry, secretary; and Nancy Otis, clerk.

Mr. FLYNT. The committee will come to order.

The counsel will call the name of the first witness.

Mr. MARSHALL. Herbert J. Brooks.

Mr. FLYNT. Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BROOKS. I do.

TESTIMONY OF HERBERT J. BROOKS, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE

Mr. FLYNT. Please be seated.

This is a continuation of the hearings conducted earlier during this session into the matter which directed this committee to make certain investigations pursuant to the provisions of House Resolution 1042.

Mr. Brooks, are you familiar with the subject matter of this investigation and the provisions of House Resolution 1042?

Mr. BROOKS. Yes, sir.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Will you state your full name for the record, please?

Mr. BROOKS. Herbert J. Brooks.

Mr. MARSHALL. Where do you live?

Mr. BROOKS. 1911 Jamestown Road, Alexandria, Va.

Mr. MARSHALL. And you are appearing here without having counsel with you; is that right?

Mr. BROOKS. Yes, sir.

Mr. MARSHALL. Now you are here pursuant to a subpoena which has previously been served upon you?

Mr. BROOKS. Yes, sir.

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Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Mr. BROOKS. Yes, sir.

Mr. MARSHALL. Now, the subpoena served upon you commanded you to produce certain documents, records and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents and writings with you?

Mr. BROOKS. I have no such documents.

Mr. MARSHALL. You have no such writings?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you have a written prepared statement which you wish to read to the committee?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you wish to present a brief oral summary of a statement at this time?

Mr. BROOKS. No, sir.

Mr. MARSHALL. In the event your evidence or testimony involve information or data concerning an executive session of the House Select Committee on Intelligence or classified information or information which may tend to degrade, incriminate, or defame any person, please notify this committee promptly so it may take appropriate action under the Rules of the House of Representatives.

Mr. BROOKS. Yes, sir.

Mr. FLYNT. May I state that a quorum is present for the purpose of taking testimony.

Mr. MARSHALL. Mr. Brooks, you were an employee of the Select Committee on Intelligence; is that right?

Mr. BROOKS. Yes, sir.

Mr. MARSHALL. Will you tell us briefly what your job title and duties were?

Mr. BROOKS. My job title was documents control clerk. My duties were to sign out relevant documents to members of the staff and to see that they were returned to the files.

Mr. MARSHALL. When did you begin your work with the select committee?

Mr. BROOKS. August 28, 1975.

Mr. MARSHALL. When did you terminate your employment?

Mr. BROOKS. The middle of March 1976.

Mr. MARSHALL. Mr. Brooks, did you give the report of the House Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Did you divulge any part of the report of the select committee or a draft of that report to anyone in the media or anyone acting on behalf of the media?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Did you give any part of the report of the committee to anyone outside the Select Committee on Intelligence?

Mr. BROOKS. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BROOKS. No, sir.

Mr. MARSHALL. That concludes my question, Mr. Chairman.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Did you say you were the documents clerk?

Mr. BROOKS. Yes, sir.

Mr. QUILLEN. Did you give any of those documents to anybody that asked for them which might be of a questionable nature?

Mr. BROOKS. No, sir.

Mr. QUILLEN. That is all, Mr. Chairman.

Mr. FLYNT. Are there any other questions?

Mr. Brooks, the committee thanks you for your appearance. You may step down. You are excused.

Mr. BROOKS. Thank you.

Mr. MARSHALL. Mr. James C. Mingee.

Mr. FLYNT. Mr. Mingee, will you remain standing while the Chair administers the oath.

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MINGEE. I do.

TESTIMONY OF JAMES C. MINGEE III, FORMER CONSULTING COUNSEL, SELECT COMMITTEE ON INTELLIGENCE

Mr. MARSHALL. Mr. Mingee, will you state your full name for the record, please?

Mr. MINGEE. My name is James C. Mingee.

Mr. MARSHALL. And you are appearing here without counsel?

Mr. MINGEE. That is correct.

Mr. MARSHALL. You are here pursuant to a subpoena having been served upon you?

Mr. MINGEE. That is correct.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolution 1042 and 1054?

Mr. MINGEE. That is correct.

Mr. MARSHALL. Copies of the rules of the House Committee on Standards of Official Conduct?

Mr. MINGEE. Yes.

Mr. MARSHALL. And a copy of the investigative procedures of this committee?

Mr. MINGEE. Yes.

Mr. MARSHALL. And a copy of the chairman's opening statement?

Mr. MINGEE. Yes.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents and writings and records, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Do you have any of these documents with you?

Mr. MINGEE. I have none. I advised your staff that the only copies I have were those which appeared in the Village Voice and I was advised by your staff that that is not what you sought.

Mr. MARSHALL. When you said that is the only copies you had, you mean you had copies of the Village Voice newspaper, not copies of the report but copies of the newspaper itself?

Mr. MINGEE. That is right, purchased at a newsstand.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee in a timely fashion so that it can take appropriate action under the Rules of the House of Representatives; is that clear to you, sir.

Mr. MINGEE. Yes, sir, and I have so advised the committee.

Mr. FLYNT. I recognize the gentleman from Tennessee for a motion.

Mr. QUILLEN. I move pursuant to House Rule XI 2(k)(5) that we receive the testimony of Mr. James C. Mingee later today in executive session, September 8, 1976.

Mr. FLYNT. This is a motion which must be made in open session with a quorum present. Further under the rules of the House, the vote on this motion must be taken by a rollcall.

Those in favor of the motion when their names are called will vote "aye," those opposed will vote "no."

Mr. SWANNER. Mr. Flynt?

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence?

[No response.]

Mr. SWANNER. Mr. Price?

[No response.]

Mr. SWANNER. Mr. Quillen?

Mr. QUILLEN. Aye.

Mr. SWANNER. Mr. Teague?

Mr. TEAGUE. Aye.

Mr. SWANNER. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

Mr. SWANNER. Mr. Hébert?

[No response.]

Mr. SWANNER. Mr. Quie?

[No response.]

Mr. SWANNER. Mr. Foley?

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell?

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett?

[No response.]

Mr. SWANNER. Mr. Cochran?

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, seven members answer "aye." Five members absent and not voting.

Mr. FLYNT. On this rollcall the ayes are seven and the nays are none. The motion is agreed to.

Accordingly, Mr. Mingee, would you temporarily step down and we will go into executive session at a later time but hopefully within a short period of time, at which time you will be recalled to the witness stand. Let me remind you at that time that you will still be under oath.

Mr. MINGEE. Thank you, Mr. Chairman.

[Mr. Mingee's prepared statement was received for the record.]

STATEMENT SUBMITTED BY JAMES C. MINGEE, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE

Mr. Chairman, members of the Committee, my name is James C. Mingee and I am very pleased to appear before you today to assist you in your inquiry regarding the unauthorized disclosure of the Intelligence Committee's report and the circumstances surrounding that "leak". It is in discussing these circumstances that I hope to be most helpful.

But first, a little background about myself. I was recruited by the C.I.A. from the University of Mississippi Law School in 1967 and began working for the Agency in the Fall of 1968. I served at Agency headquarters and at two overseas posts in the Far East in the capacity of contracting officer and also in operations. I was in a position to gain wide knowledge of Agency capabilities and operational methods, including security methods.

Indeed, at my last overseas post I was partly responsible for the security of the Agency offices. I resigned from the Agency in late 1973 to accept a post at the University of Maryland where I am employed currently as a teacher and administrator.

In July 1975 I was asked to consider taking a full time position on the staff of the House Select Committee on Intelligence. I was unable to totally relinquish my duties at the University but secured permission from my superior to serve as a part-time staff member. Before agreeing to assist the Committee, however, I made an informal inquiry through a friend to C.I.A.'s Director of Security to learn if the Agency would object or consider such assistance to be a violation of my oath of secrecy. I was advised that the Agency had no objections whatsoever. So, at the end of August 1975 I began my formal association with the Intelligence Committee as Consulting Counsel. As such I worked directly with the Committee and its staff several days per week until its work was completed in February, 1976.

While I did work on several sections of the Committee's final report I do regret that I have no personal knowledge of from whom Mr. Schorr obtained a copy of the Report. Rumors of the person's identity abound, of course. But I put little faith in the body of them.

But, having been an intimate witness to the Committee's undertakings, I confess to being only mildly surprised at the leak to Mr. Schorr. It seemed to be a tragic, if predictable, end to an ambitious attempt by this House to more effectively oversee the nation's very vital intelligence activities.

There seemed to be a general misunderstanding on the part of *some* of the Committee members and *most* of its staff of the consequences of poor security or even of what constituted poor security. Because of the poor security leaks occurred—not only the Final Report leaked, but information about the Kurdish operations and the Angolan and Italian operations. Because of the leaks a cloud of suspicion and mistrust now hangs over this House. The cloud is seen by both the general public and the Executive Branch. The cloud must be dissipated if Congress is ever to exercise its proper role and effectively oversee the intelligence activities. I believe the cloud can be removed only through a demonstration that Congress (and particularly the House) *can* keep a secret.

Most of you will recall that the case method is used widely in education institutions. It is so widely used simply because it has proven to be such an effective teaching tool. May I suggest that you study the case of the House Select Committee on Intelligence? I submit that we can all learn from the experiences of that Committee.

Let me say by way of preface that I think that Committee did a superlative job of digging out facts and investigating the various intelligence agencies in spite of some significant hardships. Not the least of those hardships was the scant period in which it was to render its report to the House—a scant 6 months! The first six months of its year of life were squandered in the squabbling among its early members.

In retrospect I believe it was a serious mistake not to have extended the life of the Committee. The incredible pressure of conducting a thorough investigation and producing a meaningful report within only six months resulted in or encouraged an attitude that nothing mattered so much as “getting the job done.” *Nothing*. Including security.

To illustrate my contention that security was lacking I'd like to give a few examples of practices and conduct which, unfortunately, were so common as to culminate in the leak of the Final Report.

Office machine repairmen had routine access to the area where typewriters, a XEROX machine and dictating machines were kept and used. The area was where most of the staff worked. There were no full walls in the area, only partitions. Conversation flowed freely in the area and could easily be overheard by such repairmen. Little if any effort was made to curb conversation in the presence of such people. Conversation aside, documents, most of them containing highly classified information, were literally scattered about the room. These repairmen were unescorted and easily could have walked away with very, very sensitive information. Twice that I can recall, reporters also were in the work area.

Telephones were used frequently to discuss classified information in local and long distance calls.

Classified waste was shredded by a mechanical device in accord with good security practice. BUT, incredibly, the shredded paper was then placed in plastic bags (usually transparent so that the contents were obvious) outside the Committee offices in the hallway for pickup by the cleaning crew. Though it would have been a tall task indeed, I can well imagine a young Soviet intelligence officer giving his career a boost by acquiring just one of those bags.

Control numbers for top secret documents are routinely used by the intelligence community to assure close control over the dissemination of such documents. Every copy of every top secret document normally has its own serial number. The committee followed no such practice (again, partially the result of time pressures) and the result was a proliferation of top secret material with no means of accounting for them.

Lack of sound inhibitors was a major contributor in my estimation to the poor security. Staff members loudly but casually discussed classified information well within earshot of persons having absolutely no “need to know”. There were no floor-to-ceiling walls in the major working area. This factor mixed with the relative free access to the area by non-Committee and non-staff people resulted in a basic security flaw. Prospective witnesses, members of the media, members of the Representative's staffs all had aural access to incredibly sensitive information.

Access by noncommittee personnel was, I think, another serious shortcoming. In particular I can recall that two persons not officially connected with the Committee had *very* good access to information coming into the Committee's possession. Mr. Paul Ahern of Representative McClory's staff and Mr. Robert Brower of Representative Dellums' staff spent as much or more time in the Committee offices as I did. To my knowledge those two gentlemen were not subjected to FBI background investigations (as was the official Committee staff) nor did they receive cautionary security briefings by CIA. Nor did they sign security agreements as we staff members did. What, other than moral suasion, is to restrain people in such a position from “leaking” with impunity?

I believe these factors to have contributed to an atmosphere which, perhaps inevitably, facilitated the leaks from the Committee. But that is all

done now. Now we must look to the future and devise a system of responsible Congressional oversight. Oversight which, I might add, is earnestly sought by senior members of the intelligence community. There is no need for an adversary relationship. There IS a need for a partnership between Congress and the intelligence community. Cooperation ought not be equated with co-option.

To that end I would respectfully offer the following suggestions:

1. *Attitude* is most important. Persons handling classified information as sensitive as that which would naturally come to Congressional oversight committees should be subjected to thorough background investigations. The results of that investigation ought to be reviewed by Executive Branch experts for their judgment—not a veto, but a considered opinion. I would even go so far as to say those persons ought to be psychologically and polygraphically examined. Such employees should sign non-disclosure agreements and could be bonded for additional incentive to maintain good security.

2. *Time* (or more precisely the lack of it) was a problem for the Intelligence Committee. The Congress, when establishing such temporary committees must very seriously consider the extent of the task assigned to such committees. The schedule should account for delays as far as possible. Better too much time than too little. Perhaps authorizing resolutions could include authority for an automatic extension (e.g. six months) upon certification of the necessity therefor by the chairman to the Speaker.

3. *Work areas* for Committees having routine access to sensitive national security information should be constructed and operated to specifications long since proven necessary and effective in the Executive Branch.

Mr. Chairman, I am sure you and the Committee will arrive at other conclusions and make other recommendations to further enhance the ability of Congress to do its job. If I can assist the Committee in any way in that task I will be pleased to do so.

In closing, permit me to say that my purpose in being so open before you today is to assist the Congress to do what it ought to be doing—actively participating in the formulation and execution of this nation's vital foreign affairs. I am not throwing "sour grapes" at anyone nor am I seeking publicity. I asked to testify in executive session and am grateful to the Committee for allowing me to do so. It's just that I have been on both sides of the intelligence fence. I know the intelligence community's capabilities and methods and am acutely aware of the potential for abuse and the concomitant need for Congressional oversight. On the other side of the fence I now am more aware of Congressional concerns and have participated in a formal investigation of the Community. In short I have seen the weaknesses on both sides of the fence and am concerned that all the weaknesses be corrected.

Mr. FLYNT. Call the next witness.

Mr. MARSHALL. John D. Burke.

Mr. FLYNT. Mr. Burke, will you raise your hand and let me administer the oath?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BURKE. I do.

TESTIMONY OF JOHN D. BURKE, FORMER RESEARCH ASSISTANT, SELECT COMMITTEE ON INTELLIGENCE

Mr. FLYNT. You may be seated.

The committee welcomes you to its session today with the thanks of the committee.

Mr. MARSHALL. Mr. Burke, would you please state your full name for the record.

Mr. BURKE. John David Burke.

Mr. MARSHALL. Where do you live?

Mr. BURKE. 3740 Military Road NW., Washington.

Mr. MARSHALL. You are appearing here without counsel?

Mr. BURKE. That is right.

Mr. MARSHALL. You are appearing pursuant to a subpoena which has previously been served upon you?

Mr. BURKE. That is right.

Mr. MARSHALL. At the time you were served with the subpoena you received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Mr. BURKE. Yes.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents, records, and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Do you have those things with you?

Mr. BURKE. I have no such documents.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise the committee in a timely fashion so that it may take appropriate action under the rules of the House.

Mr. BURKE. Yes, sir.

Mr. MARSHALL. Do you have a written statement you wish to make?

Mr. BURKE. No, sir.

Mr. MARSHALL. Do you have an oral statement you wish to make to the committee?

Mr. BURKE. No, sir.

Mr. MARSHALL. Mr. Burke, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or any other person?

Mr. BURKE. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BURKE. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of that report or any part thereof?

Mr. BURKE. No.

Mr. MARSHALL. Do you know of any one who has such knowledge?

Mr. BURKE. No.

Mr. MARSHALL. Did you divulge any part of the report of the House select committee or any draft of that report to anyone in the media or anyone acting in behalf of the media?

Mr. BURKE. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BURKE. No.

Mr. MARSHALL. Did you make any part of that report available to anyone outside the Select Committee on Intelligence?

Mr. BURKE. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. BURKE. No, sir.

Mr. MARSHALL. Mr. Burke, would you also for the record identify

what your job title was and a brief description of your duties with the select committee?

Mr. BURKE. My job title was research assistant. In this capacity we assisted the investigators developing background information.

Mr. MARSHALL. When did you begin work with the select committee?

Mr. BURKE. October 12, 1975.

Mr. MARSHALL. When did your work terminate?

Mr. BURKE. The end of February.

Mr. MARSHALL. 1976?

Mr. BURKE. Right.

Mr. MARSHALL. No further questions.

Mr. FLYNT. Are there questions on my right? Are there questions on my left?

If not, Mr. Burke, you may step down. You are excused from your subpoena with the thanks of the committee.

Mr. MARSHALL. Denise N. Gittin.

Mr. FLYNT. Ms. Gittin, will you remain standing while the Chair administers the oath?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. GITTIN. I do.

TESTIMONY OF DENISE N. GITTIN, FORMER SECRETARY, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY ARTHUR E. CAMERON, COUNSEL

Mr. FLYNT. You may be seated.

The committee welcomes you to its session and expresses the thanks of the committee for your appearance today.

Mr. MARSHALL. Would you state your full name for the record?

Ms. GITTIN. Denise Negley Gittin.

Mr. MARSHALL. Where do you live?

Ms. GITTIN. 6113 Everglades Drive, Alexandria, Va.

Mr. MARSHALL. Counsel?

Mr. CAMERON. Arthur Cameron. I am Miss Gittin's counsel.

I wish to assure the committee I have read the rules of the procedure and will so conduct myself.

Mr. MARSHALL. Thank you.

Mr. FLYNT. The committee welcomes you.

Mr. MARSHALL. You are here pursuant to a subpoena which has been previously served upon you?

Ms. GITTIN. Yes, sir.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that right?

Ms. GITTIN. That is correct.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents for the record and other writings, including copies of the drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents with you?

Ms. GITTIN. I have no such documents.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee in an appropriate fashion so it may take appropriate action under the rules of the House.

Ms. GITTIN. Yes, sir.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Do you have an oral summary of a statement you wish to make?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Ms. Gittin, could you tell us briefly what your job title was with the select committee and what your duties were?

Ms. GITTIN. I was a secretary and I typed and took shorthand and filed.

Mr. MARSHALL. Were you a secretary to a particular member of the subcommittee or in a pool?

Ms. GITTIN. I was in a pool.

Mr. MARSHALL. When did you begin to work with the select committee?

Ms. GITTIN. August 1975.

Mr. MARSHALL. And when did your work terminate?

Ms. GITTIN. February of 1976.

Mr. MARSHALL. Did you give the report of the House Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part thereof?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of a member of the media?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee on Intelligence?

Ms. GITTIN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. GITTIN. No, sir.

Mr. FLYNT. Are there questions on my right or left?

If not, Mrs. Gittin, you may step down and you are excused from your subpoena? The committee thanks you for your testimony.

Mr. MARSHALL. Martin Handelman.

Mr. FLYNT. Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HANDELMAN. I do.

**TESTIMONY OF MARTIN HANDELMAN, PRINTER, U.S. GOVERNMENT
PRINTING OFFICE, PREVIOUSLY ASSIGNED TO THE SELECT COM-
MITTEE ON INTELLIGENCE**

Mr. FLYNT. You may be seated.

Mr. Handelman, the committee welcomes you to this session and expresses the thanks of the committee for your appearance.

Mr. HANDELMAN. Thank you, Mr. Chairman.

Mr. MARSHALL. Mr. Handelman, will you state your full name for the record?

Mr. HANDELMAN. Martin Handelman.

Mr. MARSHALL. You are appearing here without counsel?

Mr. HANDELMAN. Yes.

Mr. MARSHALL. Where do you live?

Mr. HANDELMAN. 12105 Reardon Lane, Bowie, Md.

Mr. MARSHALL. Now, you are here pursuant to a subpoena having been served upon you; is that right?

Mr. HANDELMAN. Yes.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct; a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that right?

Mr. HANDELMAN. Yes.

Mr. MARSHALL. That subpoena commanded you to produce certain documents, records, and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents with you?

Mr. HANDELMAN. I have no such documents.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the House Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Mr. HANDELMAN. Yes, sir.

Mr. MARSHALL. Do you have a written prepared statement you wish to file with the committee?

Mr. HANDELMAN. No.

Mr. MARSHALL. Do you have an oral statement?

Mr. HANDELMAN. No.

Mr. MARSHALL. What was your job title and describe briefly your duties.

Mr. HANDELMAN. Well, I am employed at the Government Printing Office. I am a printer-proofreader. I was detailed to the select committee to help handle their printing needs, to act as liaison between the Government Printing Office and the committee.

Mr. MARSHALL. When did you begin work with the select committee?

Mr. HANDELMAN. About the beginning of November.

Mr. MARSHALL. When did your duties terminate?

Mr. HANDELMAN. About the middle of March.

Mr. MARSHALL. Mr. Handelman, did you give the report of the Select Committee on Intelligence or a draft of any portion of that report to Mr. Daniel Schorr or to any other person?

Mr. HANDELMAN. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HANDELMAN. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof?

Mr. HANDELMAN. No.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. HANDELMAN. No.

Mr. MARSHALL. Did you divulge any part of the report of the select committee or a draft of that report to any member of the media or anyone acting on behalf of a member of the media?

Mr. HANDELMAN. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HANDELMAN. No, sir.

Mr. MARSHALL. Did you give the report of the select committee or make any part of that record available to anyone outside of the Select Committee on Intelligence?

Mr. HANDELMAN. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HANDELMAN. No.

Mr. MARSHALL. That is all the questions I have, Mr. Chairman.

Mr. FLYNT. Mr. Foley? Mr. Hutchinson?

Mr. FOLEY. I have no questions.

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. Any other questions?

Mr. Handelman, you may step down. You are excused from your subpoena and we thank you for appearing.

Mr. MARSHALL. We call Peter L. Hughes III.

Mr. FLYNT. Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUGHES. I do.

TESTIMONY OF PETER L. HUGHES III, FORMER COUNSEL, SELECT COMMITTEE ON INTELLIGENCE

Mr. FLYNT. Mr. Hughes, you may be seated.

The committee expresses its thanks to you for appearing before this session.

Mr. HUGHES. Thank you, Mr. Chairman. I appreciate being here.

Mr. MARSHALL. Will you state your full name?

Mr. HUGHES. Peter L. Hughes III.

Mr. MARSHALL. Where do you live?

Mr. HUGHES. Four Concord Lane, Basking Ridge, N.J.

Mr. MARSHALL. You are appearing here without counsel?

Mr. HUGHES. I am an attorney.

Mr. MARSHALL. Are you permitted to practice law?

Mr. HUGHES. Yes, sir.

Mr. MARSHALL. In what States?

Mr. HUGHES. New Jersey and the District of Columbia.

Mr. MARSHALL. You are here pursuant to a subpoena having been served upon you?

Mr. HUGHES. I am.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolutions 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Mr. HUGHES. Yes, sir, I did.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents, records, and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these things with you?

Mr. HUGHES. I have no such documents. I have a brief statement and I will cover that.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Mr. HUGHES. I will.

Mr. MARSHALL. Do you have a prepared statement you wish to file with the committee?

Mr. HUGHES. Yes; I have a brief statement.

Mr. FLYNT. You may proceed.

Mr. HUGHES. Thank you.

Mr. Chairman and members of this Committee on Standards of Official Conduct, I am pleased to be among those remaining members of the staff of the House Committee on Intelligence to testify before your committee on the issues of House Resolution 1042 and House Resolution 1054. I welcome the opportunity, and I am at your service.

My presence here is at your request, necessarily by subpoena. I am happy to appear by your invitation, which I accept. However, my present job requires that I justify my presence here under legal process, since I am employed by, and under the constraints of, another government. Also, the distance I must travel necessitates some assistance in coverage of expenses I have incurred.

In further response to your *duces tecum*, I reply that I have possession of no documents whatsoever which relate in any way to the subject matter of your inquiry. Every document possibly germane to your command, and every document at my disposal relevant to the work of the House Committee on Intelligence was remanded to the House Committee on Intelligence files, before I left the employ of the Congress.

Other than the foregoing, I will be obliged if I can assist your inquiry as best I can do.

Thank you, Mr. Chairman.

Mr. MARSHALL. Mr. Hughes, what was your job title with the Select Committee on Intelligence?

Mr. HUGHES. I was a staff counsel and head of the Domestic Intelligence Task Force.

Mr. MARSHALL. When did you begin your duties?

Mr. HUGHES. July 31, 1975.

Mr. MARSHALL. When did you terminate your duties, February?

Mr. HUGHES. February 29, 1976.

Mr. MARSHALL. Did you give the report of the Select Committee or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Mr. HUGHES. I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HUGHES. I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof?

Mr. HUGHES. No knowledge whatsoever.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. HUGHES. I do not.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of a member of the media?

Mr. HUGHES. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HUGHES. I do not.

Mr. MARSHALL. Did you make any part of that report available to anyone outside the Select Committee on Intelligence?

Mr. HUGHES. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HUGHES. I do not.

Mr. MARSHALL. Mr. Hughes, the Chair has already thanked you for your appearance. The Chair wishes to add that we congratulate you on the clarity and preciseness and forthrightness of that statement.

Mr. HUGHES. I appreciate that very much.

Mr. FLYNT. Are there any questions?

You may step down, Mr. Hughes. The committee wishes to thank you. You are now excused from your subpoena.

Mr. MARSHALL. Thomas H. Hattery.

Mr. FLYNT. Mr. Hattery, will you remain standing and take the oath, please?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HATTERY. I do.

TESTIMONY OF THOMAS H. HATTERY, FORMER RESEARCH ASSISTANT, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY ROBERT B. CORNELL, COUNSEL

Mr. FLYNT. Mr. Hattery, the committee welcomes you to this session and thanks you for your appearance at this time.

Mr. HATTERY. Thank you.

Mr. MARSHALL. Mr. Hattery, would you please state your full name and residence address?

Mr. HATTERY. Thomas H. Hattery, Route 4, Mount Airy, Md.

Mr. MARSHALL. Are you appearing with counsel?

Mr. HATTERY. Yes, sir.

Mr. MARSHALL. Counsel, would you identify yourself?

Mr. CORNELL. Robert B. Cornell, sir.

Mr. FLYNT. Mr. Cornell, the committee welcomes you to this session in your capacity as counsel to Mr. Hattery.

Mr. CORNELL. Thank you, Mr. Chairman.

Mr. MARSHALL. Mr. Hattery, you are here pursuant to a subpoena having been served upon you previously.

Mr. HATTERY. Yes.

Mr. MARSHALL. At the time the subpoena was served, you also received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the Investigative Procedures of this committee, and a copy of the Chairman's opening statement; is that correct?

Mr. HATTERY. That is correct.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents?

Mr. HATTERY. Yes; I have. I have no drafts or reports but my counsel has all the papers or reports that I have that have anything to do with the committee.

Mr. MARSHALL. May I have them at this time?

[The documents referred to were submitted to the committee.]

Mr. MARSHALL. Mr. Hattery, in the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Mr. HATTERY. I will.

Mr. MARSHALL. Do you have a written statement which you wish to file with the committee?

Mr. HATTERY. No.

Mr. MARSHALL. Do you wish to present a brief oral summary of your statement at this time?

Mr. HATTERY. No, sir.

Mr. MARSHALL. What was your job title with the committee?

Mr. HATTERY. Research assistant.

Mr. MARSHALL. When did you begin your duties?

Mr. HATTERY. Sometime late in August.

Mr. MARSHALL. What year?

Mr. HATTERY. 1975.

Mr. MARSHALL. When did you terminate those duties?

Mr. HATTERY. To the best of my knowledge it was January 10. I say to the best of my knowledge because I started working in An-

napolis the first day of the Maryland Legislature and just reconstructing from the calendar I know I left the committee before that started.

Mr. MARSHALL. Mr. Hattery, did you give the report of the select committee or a draft of any part of that report to Mr. Schorr or to any other person?

Mr. HATTERY. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HATTERY. No; I don't.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part thereof?

Mr. HATTERY. No.

Mr. MARSHALL. Do you know of anyone who had such knowledge?

Mr. HATTERY. No.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of that report to anyone in the media or anyone acting on behalf of a member of the media?

Mr. HATTERY. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HATTERY. No.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or make any part of that report available to anyone outside the Select Committee on Intelligence.

Mr. HATTERY. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HATTERY. No.

Mr. FOLEY [presiding]. Are there any questions?

There being no questions, Mr. Hattery, you are excused from your subpoena and any further testimony and you are excused with the thanks of the committee.

Stanley Hecht?

Mr. FLYNT. Let the record show that the Chair designates the gentleman from Washington, Mr. Foley, to administer the oath to Mr. Hecht.

Mr. FOLEY. Mr. Hecht, will you raise your right hand?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HECHT. I do.

TESTIMONY OF STANLEY M. HECHT, FORMER COUNSEL, SELECT COMMITTEE ON INTELLIGENCE

Mr. FLYNT. Be seated, please.

Will you state your full name and address for the record?

Mr. HECHT. Stanley H. Hecht, 3705 South George Mason Drive, Falls Church, Va.

Mr. MARSHALL. You are appearing here without counsel?

Mr. HECHT. That is correct.

Mr. MARSHALL. You are here pursuant to subpoena which was served upon you previously?

Mr. HECHT. That is correct.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Mr. HECHT. Yes; I did.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents, records and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Do you have those documents and writings with you?

Mr. HECHT. I have no such documents.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Mr. HECHT. I will.

Mr. MARSHALL. Do you have a written prepared statement which you wish to file with the committee?

Mr. HECHT. No; I do not.

Mr. MARSHALL. Do you have a brief oral summary of the statement you wish to make at this time?

Mr. HECHT. Not at this time.

Mr. MARSHALL. Mr. Hecht, what was your job title with the Select Committee on Intelligence?

Mr. HECHT. Counsel.

Mr. MARSHALL. Are you admitted to the bar?

Mr. HECHT. In the District of Columbia.

Mr. MARSHALL. When did you begin your duties?

Mr. HECHT. September 7, 1975.

Mr. MARSHALL. When did your duties terminate?

Mr. HECHT. The end of January 1976.

Mr. MARSHALL. Mr. Hecht, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Mr. HECHT. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HECHT. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part thereof?

Mr. HECHT. No; I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. HECHT. No.

Mr. MARSHALL. Did you divulge any part of that report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of a member of the media?

Mr. HECHT. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HECHT. No.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee on Intelligence?

Mr. HECHT. No.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HECHT. No.

Mr. MARSHALL. That concludes my questions.

Mr. FOLEY. Any further questions?

Mr. Hecht, you are excused from further testimony and from your subpoena. You are excused with the thanks of the committee.

Mr. HECHT. Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Charles W. Mattox?

Mr. FLYNT. Let the record show that the Chair designates the gentleman from Washington, Mr. Foley, to administer the oath to Mr. Mattox.

Mr. FOLEY. Will you raise your right hand?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MATTOX. I do.

TESTIMONY OF CHARLES W. MATTOX, FORMER STAFF INVESTIGATOR, SELECT COMMITTEE ON INTELLIGENCE

Mr. FLYNT. You may be seated.

Will you state your full name and address?

Mr. MATTOX. Charles Winter Mattox, 8213 Mockingbird Drive, Annandale, Va.

Mr. FOLEY. Counsel?

Mr. MARSHALL. Mr. Mattox, you are appearing here without counsel?

Mr. MATTOX. That is right.

Mr. MARSHALL. You are here pursuant to a subpoena served upon you previously; is that correct?

Mr. MATTOX. That is correct.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolutions 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Mr. MATTOX. That is correct.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents, records, and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Do you have those documents with you?

Mr. MATTOX. I have two memorandums with me, one was an internal memorandum to the committee; one was a memorandum made after I went back to work for the General Accounting Office.

Mr. MARSHALL. Will you turn those documents over to the committee at this time?

Mr. MATTOX. I think any questions raised by these documents should be answered in executive session.

[The documents referred to were submitted to the committee.]

Mr. MATTOX. I would like to make one more statement.

Somebody sent me a check as a Government employee. I can't use it.

Mr. MARSHALL. The committee will be happy to receive that check back with its thanks.

In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Mr. MATTOX. Yes.

Mr. MARSHALL. Mr. Mattox, do you have a written statement you wish to file with the committee?

Mr. MATTOX. No.

Mr. MARSHALL. Do you have a brief oral summary of a statement you wish to make at this time?

Mr. MATTOX. No.

Mr. MARSHALL. What was your job title with the House Select Committee on Intelligence?

Mr. MATTOX. Staff investigator.

Mr. MARSHALL. When did you begin those duties?

Mr. MATTOX. July 28, 1975.

Mr. MARSHALL. When did those duties terminate?

Mr. MATTOX. February 14, 1976.

Mr. MARSHALL. Mr. Mattox, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Mr. MATTOX. I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. MATTOX. No, I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part thereof?

Mr. MATTOX. I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. MATTOX. No, I do not.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of a member of the media?

Mr. MATTOX. I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. MATTOX. No, I do not.

Mr. MARSHALL. Did you give the report of the select committee or any part of that report to anyone outside the Select Committee on Intelligence?

Mr. MATTOX. No, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Mr. MATTOX. No, I do not.

Mr. MARSHALL. Excuse me.

[Discussion off the record.]

Mr. FOLEY. On the record.

Are there any questions of Mr. Mattox?

Mr. FLYNT. No questions except to say that I do thank you, Mr. Mattox, for appearing and bringing the two documents which you did. After the committee has had time to examine them, they will either be returned to you or you will be notified about when you can expect them back.

Mr. MATTOX. Thank you.

Mr. FOLEY. Mr. Hutchinson?

Mr. HUTCHINSON. I have no questions.

Mr. FOLEY. Thank you very much for your appearance. You are excused from further testimony on your subpoena.

Mr. MATTOX. Thank you.

Mr. MARSHALL. We will call Ellen S. Miller.

Will you remain standing while the Chair administers the oath?

Mr. FLYNT. Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. MILLER. I do.

**TESTIMONY OF ELLEN S. MILLER, FORMER STAFF INVESTIGATOR,
SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY
HAROLD HIMMELMAN, COUNSEL**

Mr. FLYNT. Please be seated.

The committee welcomes you to this session and we thank you for your appearance.

Mr. MARSHALL. Would you state your complete name and address for the record?

Ms. MILLER. My name is Ellen S. Miller. I reside at 2501 Tracey Place NW., Washington, D.C.

Mr. MARSHALL. Are you appearing here with counsel?

Ms. MILLER. Yes; I am.

Mr. MARSHALL. Would you identify yourself for the record?

Mr. HIMMELMAN. Himmelman, Harold, Washington, D.C.

Mr. MARSHALL. Ms. Miller, you are here pursuant to a subpoena having been served upon you previously?

Ms. MILLER. Yes; I am.

Mr. MARSHALL. At the time the subpoena was served, you also received copies of House Resolution 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Ms. MILLER. Yes.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents and writings?

Ms. MILLER. Yes; I have all the documents that were in my possession.

[The documents referred to were submitted to the committee.]

Mr. FLYNT. Mr. Himmelman, the Chair and the committee also welcomes you before this committee in your capacity as counsel.

Mr. HIMMELMAN. Thank you, Mr. Chairman.

Mr. MARSHALL. Ms. Miller, in the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Ms. MILLER. Yes; I will.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee at this time?

Ms. MILLER. I do not.

Mr. MARSHALL. Do you wish to present a brief oral summary of a statement to the committee at this time?

Ms. MILLER. I do not.

Mr. MARSHALL. What was your job with the committee?

Ms. MILLER. I was an investigator with the domestic task force with the committee.

Mr. MARSHALL. When did you begin?

Ms. MILLER. On or about August 5, 1975 and I terminated the last day of February 1976.

Mr. MARSHALL. Ms. Miller, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Ms. MILLER. I did not give it to Daniel Schorr. I worked on preliminary drafts and those were circulated throughout the committee by the domestic task force, but I did not give it to Mr. Schorr.

Mr. MARSHALL. Other than circulating those preliminary reports that you have testified about to either members of the committee or to employees of the committee, did you give the report of the select committee or a draft of any part of that report to any other person?

Ms. MILLER. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Ms. MILLER. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the House select committee or any part thereof?

Ms. MILLER. No; I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. MILLER. No; I do not.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of a member of the media?

Ms. MILLER. No; I did not.

Mr. MARSHALL. Do you know of anyone who did?

Ms. MILLER. No; I do not.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee on Intelligence?

Ms. MILLER. No.

Mr. MARSHALL. Do you know of anyone who did?

Ms. MILLER. No; I do not.

Mr. MARSHALL. Ms. Miller, with regard to the materials that you have produced pursuant to the subpoena duces tecum, to your knowledge is any of that material classified?

Ms. MILLER. To my knowledge none of it is classified. It consists mainly of memos and notes and working papers I used in the course of my work.

Mr. MARSHALL. That material will be received by the committee, Ms. Miller, and will be returned to you at a later date if the committee decides that is appropriate. Is that satisfactory?

Ms. MILLER. That is satisfactory. If there is a need to remove any material, I would appreciate and my counsel would appreciate a conference to understand the nature of the material removed and the reason for it.

Mr. MARSHALL. What you are asking is that you be advised in the event that the committee wishes to retain any material you produce?

Mr. HIMMELMAN. That is correct, Mr. Marshall. Ms. Miller maintained most of her file memoranda and related documents which she prepared in the course of her work. She believes none of the material is classified. In the event the committee determines that some documents should be retained by the committee, we would appreciate knowing that and if possible, knowing the basis for that determination in light of the fact that we do not believe anything in this file would be considered to be classified information.

She would like to have her personal papers returned so that if the committee determined to keep any of the documents, she would simply like to be advised of it.

Mr. FLYNT. Without objection, the committee, of course, will grant a part of Ms. Miller's request and your request made in behalf of Ms. Miller. However, while the staff director is looking for a pertinent rule, it is present opinion of the Chair that all such documents are the property of the House of Representatives and are not the property of an individual.

Notwithstanding that, the committee will certainly grant the request for a conference and will, of course, act with total courtesy and respect for both individual and property rights.

Mr. HIMMELMAN. We appreciate that, Mr. Chairman, and of course are anxious to cooperate with the committee.

Mr. FLYNT. We appreciate that expression of cooperation and in turn will assure you of the committee's cooperation insofar as is possible.

Mr. HIMMELMAN. Can the committee advise us as to how long a period of time will be involved in reviewing these files and getting back in touch with us?

Mr. FLYNT. Would a week impose any undue inconvenience?

Mr. HIMMELMAN. No, that is perfectly agreeable.

Mr. FLYNT. The Chair was going to state that if it would, we would try to advise you within 72 hours, if we could advise you not later than the close of business on September 15th the committee will do so.

Mr. HIMMELMAN. We will be happy to accommodate your schedule, sir.

Mr. FLYNT. Are there any questions?

Mr. HUTCHINSON?

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. Mrs. Miller, you and your counsel may step down. You are excused from further testimony and you are excused from your subpoena with the thanks of the committee. The committee does not anticipate recalling you, but if we do, we will issue another subpoena.

So you are excused from further testimony today and also from your subpoena.

Ms. MILLER. Thank you.

Mr. MARSHALL. Michal Ann Schafer.

Mr. FLYNT. Mrs. Schafer, will you raise your right hand, please?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SCHAFFER. I do.

**TESTIMONY OF MICHAL ANN SCHAFFER, FORMER SECRETARY,
SELECT COMMITTEE ON INTELLIGENCE**

Mr. MARSHALL. Will you state your full name for the record?

Ms. SCHAFFER. Michal Ann Schafer.

Mr. MARSHALL. Where do you live?

Ms. SCHAFFER. 4500 South Four Mile Run Drive, Arlington, Va.

Mr. MARSHALL. You are appearing here without counsel?

Ms. SCHAFFER. Yes, I am.

Mr. MARSHALL. You are here pursuant to a subpoena which was previously served upon you?

Ms. SCHAFFER. That is correct.

Mr. MARSHALL. At the time the subpoena was served, you also received copies of House Resolutions 1042 and 1054, and a copy of the rules of the House Committee on Standards of Official Conduct?

Ms. SCHAFFER. Yes.

Mr. MARSHALL. A copy of the investigative procedures of this committee?

Ms. SCHAFFER. Yes.

Mr. MARSHALL. And a copy of the chairman's opening statement?

Ms. SCHAFFER. Yes.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents or writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents and writings with you?

Ms. SCHAFFER. I have no such documents.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, could you advise this committee so it can take appropriate action under the rules of the House?

Ms. SCHAFFER. Yes, I will.

Mr. MARSHALL. Do you have a written statement you wish to make.

Ms. SCHAFFER. No.

Mr. MARSHALL. Do you have a brief oral summary you wish to make?

Ms. SCHAFFER. No, I do not.

Mr. MARSHALL. Would you tell us what your job title was with the Select Committee?

Ms. SCHAFFER. I was a secretary.

Mr. MARSHALL. Was this a secretary for a particular person or for a pool?

Ms. SCHAFFER. It was a pool of two.

Mr. MARSHALL. Who were the two?

Ms. SCHAFFER. It was myself and Denise Gittin.

Mr. MARSHALL. When did you begin your duties as a secretary?

Ms. SCHAFFER. June 1, 1975 and terminated March 31, 1976.

Mr. MARSHALL. Mrs. Schafer, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Ms. SCHAFFER. No, I did not.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHAFFER. No.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part thereof?

Ms. SCHAFFER. No, I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. SCHAFFER. No.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of the media?

Ms. SCHAFFER. No.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHAFFER. No, sir.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee on Intelligence?

Ms. SCHAFFER. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHAFFER. No, sir.

Mr. MARSHALL. That is all.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. Mrs. Schafer, you may step down. You are excused from your subpoena with the thanks of the committee.

Ms. SCHAFFER. Thank you.

Mr. MARSHALL. Kenneth A. Seidel?

Mr. FLYNT. Mr. Seidel, will you raise your right hand, please?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SEIDEL. Yes, sir.

**TESTIMONY OF KENNETH A. SEIDEL, PRINTER, U.S. GOVERNMENT
PRINTING OFFICE, PREVIOUSLY ASSIGNED TO SELECT COMMITTEE
ON INTELLIGENCE**

Mr. FLYNT. You may be seated.

Mr. Seidel, the committee welcomes you and thanks you for your appearance.

Mr. SEIDEL. Thank you.

Mr. MARSHALL. Will you state your full name and residence for the record?

Mr. SEIDEL. Kenneth A. Seidel. I live at 3307 Cannongate Road, Fairfax, Va.

Mr. MARSHALL. You are appearing here without counsel?

Mr. SEIDEL. Yes.

Mr. MARSHALL. You are here pursuant to subpoena which was served upon you previously?

Mr. SEIDEL. Yes, sir.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolutions 1042 and 1054; is that right?

Mr. SEIDEL. Yes, sir.

Mr. MARSHALL. A copy of the rules of the House Committee on Standards of Official Conduct?

Mr. SEIDEL. Yes.

Mr. MARSHALL. A copy of the Investigative Procedures of this committee?

Mr. SEIDEL. Yes.

Mr. MARSHALL. And a copy of the chairman's opening statement?

Mr. SEIDEL. Yes, sir.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought these documents or writings with you?

Mr. SEIDEL. I have no such documents, sir.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Mr. SEIDEL. Yes, I will.

Mr. MARSHALL. Do you have a prepared written statement to present to the committee at this time?

Mr. SEIDEL. No, sir.

Mr. MARSHALL. Do you wish to present a brief oral summary of a statement?

Mr. SEIDEL. No, sir.

Mr. MARSHALL. Mr. Seidel, what was your job title with the Select Committee on Intelligence?

Mr. SEIDEL. Mr. Marshall, I was assigned to the Select Committee on Intelligence on loan from the Government Printing Office as a

printer to handle all the printing of the hearings, any committee reports, committee prints and the final report.

Mr. MARSHALL. When did you begin your duties with the select committee?

Mr. SEIDEL. August 1975.

Mr. MARSHALL. When did those duties terminate?

Mr. SEIDEL. Approximately the middle of April 1976.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Mr. SEIDEL. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. SEIDEL. No; I don't.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part of that report?

Mr. SEIDEL. No, sir.

Mr. MARSHALL. Do you know of anyone who had such knowledge?

Mr. SEIDEL. No; I don't.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of the media?

Mr. SEIDEL. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. SEIDEL. No; I do not.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee on Intelligence?

Mr. SEIDEL. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. SEIDEL. No, sir, I don't.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. I have no questions.

Mr. FLYNT. Mr. Seidel, you may step down. You are excused from your subpoena.

Thank you.

Mr. SEIDEL. Thank you, Mr. Chairman.

Mr. MARSHALL. I would like to inquire if any of the following persons are present with counsel.

Paul Hyndman?

Mr. Hyndman, do you have a counsel with you?

Mr. HYNDMAN. No; I don't have counsel.

Mr. MARSHALL. Please be seated and let me call for the others.

Jeffrey R. Whieldon?

Katherine J. Schroeder?

Susan R. Paisner?

Ms. PAISNER. Present.

Mr. MARSHALL. Are you here with counsel?

Ms. PAISNER. No; he will be here this afternoon.

Mr. MARSHALL. Thank you.

Cheryl T. Yamamoto?

Mr. FLYNT. Mr. Hyndman, will you please stand and let the oath be administered?

Do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HYNDMAN. I do.

**TESTIMONY OF PAUL V. HYNDMAN, FORMER INVESTIGATOR,
SELECT COMMITTEE ON INTELLIGENCE**

Mr. MARSHALL. Mr. Hyndman, would you state your full name and address for the record?

Mr. HYNDMAN. Paul Vance Hyndman, 2410 20th Street, NW.

Mr. MARSHALL. You are appearing here without counsel?

Mr. HYNDMAN. That is right.

Mr. MARSHALL. You do not desire counsel?

Mr. HYNDMAN. No; I don't.

Mr. MARSHALL. You are here pursuant to a subpoena served upon you previously?

Mr. HYNDMAN. I was not, no. I just got all this information just now.

Mr. MARSHALL. You are appearing voluntarily before the committee?

Mr. HYNDMAN. Yes, sir.

Mr. MARSHALL. Have you been supplied with copies of House Resolutions 1042 and 1054?

Mr. HYNDMAN. I believe I was just supplied that information about 3 minutes ago.

Mr. MARSHALL. And a copy of the rules of the House Committee on Standards of Official Conduct?

Mr. HYNDMAN. I was supplied that same information at the same time.

Mr. MARSHALL. And a copy of the investigative procedures and the chairman's opening statement?

Mr. HYNDMAN. That is correct. I received them at the same time.

Mr. MARSHALL. Would you like to have time to review those and testify later this afternoon or do you wish to go forward?

Mr. HYNDMAN. I think I understand the procedures that have been followed here.

Mr. MARSHALL. Mr. Hyndman, do you have in your possession any documents or records or writings, including any copies or draft of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591?

Mr. HYNDMAN. Short of press clippings and open source information, I have none.

Mr. MARSHALL. When you say open source information, do you mean information which appeared in the public media?

Mr. HYNDMAN. Yes.

Mr. MARSHALL. But short of that, you have no papers which you retained as a part of your work with the select committee?

Mr. HYNDMAN. I believe I have my own personal notes, but in no sense are they classified.

Mr. MARSHALL. Would you be willing to allow this committee to examine those notes?

Mr. HYNDMAN. I certainly would.

Mr. MARSHALL. At the conclusion of your testimony I will ask Mr. John Marshall, a member of the committee staff, to make appropriate arrangements with you to let the committee look at those notes.

Mr. HYNDMAN. Certainly.

Mr. MARSHALL. You are willing to let the committee do this without a subpoena of any kind; correct?

Mr. HYNDMAN. Correct.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, would you please advise this committee in a timely fashion so that it can take appropriate action under the rules of the House?

Mr. HYNDMAN. I will.

Mr. MARSHALL. Do you have a written statement you wish to file?

Mr. HYNDMAN. No.

Mr. MARSHALL. Do you wish to present a brief oral summary of a statement?

Mr. HYNDMAN. No, I don't.

Mr. MARSHALL. What was your job title with the House Select Committee on Intelligence?

Mr. HYNDMAN. I was an investigator assigned to working on foreign intelligence.

Mr. MARSHALL. When did you begin your duties?

Mr. HYNDMAN. I believe about September 8 or 9, 1975.

Mr. MARSHALL. When did you terminate those duties?

Mr. HYNDMAN. At the end of the committee's existence, at the end of February.

Mr. MARSHALL. 1976?

Mr. HYNDMAN. Right.

Mr. MARSHALL. Mr. Hyndman, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or any other person?

Mr. HYNDMAN. I didn't.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HYNDMAN. No, I don't.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report of the Select Committee on Intelligence or any part thereof?

Mr. HYNDMAN. No, I don't.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. HYNDMAN. No, I don't.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of that report to anyone in the media or anyone acting on behalf of a member of the media?

Mr. HYNDMAN. No, I didn't.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HYNDMAN. No.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee on Intelligence?

Mr. HYNDMAN. No, I didn't. I saw it in a member's office is all. I thought I may have taken it to a member's office, but I didn't.

Mr. MARSHALL. Is it your testimony that you took a draft of the select committee's report to a member's office?

Mr. HYNDMAN. I did not; no, I didn't.

Mr. MARSHALL. Did you see it in a member's office?

Mr. HYNDMAN. I certainly did, yes.

Mr. MARSHALL. Which member was that?

Mr. HYNDMAN. Congressman McClory's office.

Mr. MARSHALL. When was that, sir?

Mr. HYNDMAN. I don't remember the date. It would have been something during the discussion that we had on the final report.

Mr. MARSHALL. Was it prior to the time the final report had been voted on by the Select Committee on Intelligence?

Mr. HYNDMAN. I frankly can't remember.

Mr. MARSHALL. What were the circumstances of your seeing the report in Mr. McClory's office?

Mr. HYNDMAN. I was sitting with one of his staff personnel, Mr. Paul Ahern.

Mr. MARSHALL. Was anyone else present?

Mr. HYNDMAN. No.

Mr. MARSHALL. My question was, did you give the report of the select committee or make any part of that report available to anyone outside the Select Committee on Intelligence?

Mr. HYNDMAN. No, I didn't.

Mr. MARSHALL. Do you know of anyone who did?

Mr. HYNDMAN. No, I don't.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. What was your position with the committee?

Mr. HYNDMAN. I was an investigator working on foreign intelligence.

Mr. HUTCHINSON. No further questions.

Mr. FLYNT. Mr. Hyndman, you may step down. You are hereby excused from your subpoena with the thanks of the committee for your appearance.

Mr. HYNDMAN. Thank you.

[Witness excused.]

Mr. FLYNT. Pursuant to the motion adopted earlier in this committee session, pursuant to the motion made by the gentleman from Tennessee, Mr. Quillen, the committee will go into executive session. With the motion made in open session and a quorum being present and by a roll call vote of 7 to 5, the motion was passed.

The committee now resolves itself into executive session and the committee respectfully requests Mr. Mingee and Mr. Mattox to remain briefly with the understanding that we will call Mr. Mingee at this time and that we may or may not call Mr. Mattox.

But Mr. Mattox, if the committee does not call you, you will be promptly excused.

The committee hereby resolves itself into executive session pursuant to the motion of Mr. Quillen heretofore adopted by the committee.

[Whereupon, at 11:07 a.m., the committee proceeded into executive session.]

[The committee resumed in open session at 2:21 p.m.]

Mr. FOLEY [*presiding*]. The Committee on Standards of Official Conduct will come to order.

The committee meets again in public session for the purpose of receiving testimony of the witnesses called. The record will show that a quorum is present for the purpose of receiving testimony.

The first witness scheduled for this afternoon's hearings is Mr. Jeffrey R. Whieldon.

Will you remain standing?

Mr. FLYNT. I hereby designate the gentleman from Washington, Mr. Foley, to administer the oath to Jeffrey R. Whieldon.

Mr. FOLEY. Mr. Whieldon, do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WHIELDON. I do.

TESTIMONY OF JEFFREY R. WHIELDON, FORMER COUNSEL, SELECT COMMITTEE ON INTELLIGENCE

Mr. FOLEY. Would you state your full name and address for the record?

Mr. WHIELDON. My name is Jeffrey R. Whieldon. I live at 213 Ninth Street SE., Washington, D.C.

Mr. FOLEY. Counsel?

Mr. MARSHALL. Mr. Whieldon, you are appearing here without counsel?

Mr. WHIELDON. That is correct.

Mr. MARSHALL. You are here pursuant to a subpoena served upon you?

Mr. WHIELDON. That is correct.

Mr. MARSHALL. At the time the subpoena was served, you also received copies of House Resolutions 1042 and 1054, a copy of the rules of the House Committee on Standards of Official Conduct, a copy of the investigative procedures of this committee, and a copy of the chairman's opening statement; is that correct?

Mr. WHIELDON. That is true.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain documents, records, and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Do you have those documents?

Mr. WHIELDON. I had some documents and I have given them to Mr. Harkness.

Mr. MARSHALL. Of this committee staff?

Mr. WHIELDON. Yes, that is correct, prior to the meeting.

Mr. MARSHALL. And you turned over to Mr. Harkness all the documents you brought pursuant to the subpoena?

Mr. WHIELDON. Yes, all that I had included within the subpoena.

Mr. MARSHALL. In the event your evidence or testimony may involve information or data concerning an executive session of the House Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, would you please advise this committee so that it may take appropriate action under the rules of the House?

Mr. WHIELDON. I will.

Mr. MARSHALL. Do you have a written prepared statement which you wish to file with the committee?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Do you have an oral statement that you wish to make at this time?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. What was your job title with the Select Committee on Intelligence?

Mr. WHIELDON. The job title, Mr. Marshall, was counsel to the Select Committee on Intelligence.

Mr. MARSHALL. Are you admitted to the bar?

Mr. WHIELDON. I am.

Mr. MARSHALL. What bar are you admitted to?

Mr. WHIELDON. Commonwealth of Massachusetts and the District of Columbia.

Mr. MARSHALL. When did you begin your duties with the select committee?

Mr. WHIELDON. June 23, 1975, I began work with the committee.

Mr. MARSHALL. When did you terminate those duties?

Mr. WHIELDON. I believe I was on the payroll until February 29, 1976.

Mr. MARSHALL. Mr. Whieldon, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof?

Mr. WHIELDON. I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to anyone in the media or anyone acting on behalf of a member of the media?

Mr. WHIELDON. No, Sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or make any part of that report available to anyone outside the Select Committee on Intelligence?

Mr. WHIELDON. Outside of the membership or the staff?

Mr. MARSHALL. Membership or staff of the Select Committee on Intelligence?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Mr. WHIELDON. No, sir.

Mr. MARSHALL. Thank you.

Mr. FOLEY. Are there any questions of Mr. Whieldon?

Mr. Price?

Mr. PRICE. I have no questions.

Mr. FOLEY. Mr. Chairman?

Mr. FLYNT. I have no questions.

Mr. FOLEY. Mr. Whieldon, we appreciate your appearance this afternoon. You are excused from your subpoena with the thanks of the committee.

Mr. WHIELDON. Thank you very much.

Mr. FOLEY. The next witness will be Miss Katherine J. Schroeder.

Mr. FLYNT. I hereby designate the gentleman from Washington, Mr. Foley, to administer the oath to Miss Schroeder.

Mr. FOLEY. Miss Schroeder, do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SCHROEDER. I do.

TESTIMONY OF KATHERINE J. SCHROEDER, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY LAWRENCE R. VELVEL, COUNSEL

Mr. FOLEY. Would you state your full name and address?

Ms. SCHROEDER. Katherine J. Schroeder. I live at 4005 Fessenden Street NW., Washington, D.C.

Mr. MARSHALL. Can you tell me how to pronounce your last name.

Ms. SCHROEDER. Shrayer.

Mr. MARSHALL. Are you appearing here with counsel?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. Will you identify yourself for the record?

Mr. VELVEL. Lawrence R. Velvel, counsel to Miss Katherine Schroeder.

Mr. MARSHALL. Miss Schroeder, you are appearing pursuant to a subpoena which was served upon you previously?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolution 1042 and 1054?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. And a copy of the rules of the House Committee on Standards of Official Conduct?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. And a copy of the Investigative Procedures of this committee?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. And a copy of the chairman's opening statement?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. The subpoena served on you commanded you to produce certain documents and other writings, including copies of drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591. Have you brought those documents with you?

Ms. SCHROEDER. Yes, sir.

Mr. MARSHALL. Do you have them now?

Ms. SCHROEDER. Yes, I do.

Mr. MARSHALL. Will you turn them over to a member of my staff?

Ms. SCHROEHER. Surely.

[The documents referred to were submitted to the committee.]

Mr. MARSHALL. Mrs. Schroeher, in view of the voluminous nature of those documents, at the conclusion of your testimony I am going to request that you stand by so we have an opportunity to examine them before you are excused.

Ms. SCHROEHER. Surely.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, please advise this committee so that it may take appropriate action under the rules of the House.

Ms. SCHROEHER. Yes, sir.

Mr. MARSHALL. Do you have a written statement which you wish to file with the committee?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Do you have a brief oral statement you wish to make?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Miss Schroeher, what was your job title with the Select Committee on Intelligence?

Ms. SCHROEHER. I was a writer and a researcher.

Mr. MARSHALL. Did you work for a particular member of the select committee?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Who was your immediate supervisor?

Ms. SCHROEHER. Stanley Bach.

Mr. MARSHALL. When did you begin duties with the Select Committee on Intelligence?

Ms. SCHROEHER. September 1, 1975.

Mr. MARSHALL. When did those duties conclude?

Ms. SCHROEHER. February 18, 1976.

Mr. MARSHALL. Ms. Schroeher, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr or to any other person?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of the report or any part thereof?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Do you know of anyone who does?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or any draft of such report to a member of the media or anyone acting on behalf of a member of the media?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or make any part of that report available to anyone outside of the Select Committee on Intelligence?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. SCHROEHER. No, sir.

Mr. MARSHALL. That concludes my questions.

Mr. FOLEY. Are there any additional questions?

Mr. QUIE. Did you write a portion of the final report?

Ms. SCHROEHER. No, sir. I helped to write a first draft of the report.

Mr. QUIE. Thank you.

Mr. FOLEY. Are there any further questions?

We appreciate your appearance this afternoon. You are excused from any further testimony and from the subpoena.

Mr. MARSHALL. Is Susan R. Paisner in the committee room?

Ms. PAISNER. My attorney is not here yet. I prefer to wait until he gets here, if that is all right.

Mr. MARSHALL. All right.

Cheryl T. Yamamoto, is she in the committee room?

[No response.]

Mr. JOHN T. MARSHALL. We call Mr. John W. Marshall to the witness stand.

Mr. FLYNT. I hereby authorize the gentleman from Washington, Mr. Foley, to administer the oath to Mr. Marshall.

Mr. FOLEY. Mr. Marshall, do you solemnly swear that the testimony you will give before this committee in the matters under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JOHN W. MARSHALL. I do.

TESTIMONY OF JOHN W. MARSHALL, DEPUTY DIRECTOR OF INVESTIGATIONS, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

Mr. FOLEY. Would you state your full name, address, and position for the record?

Mr. JOHN W. MARSHALL. John W. Marshall, 2301 South Jefferson Davis Highway, Arlington, Va., deputy director of investigations of the Committee on Standards of Official Conduct.

Mr. JOHN T. MARSHALL. My name is John T. Marshall and we are not related.

Mr. Marshall, at my direction did you attempt to locate and serve a subpoena on Mr. Jacob A. Beam?

Mr. JOHN W. MARSHALL. A member of the investigative staff did.

Mr. JOHN T. MARSHALL. Do you know the results of that attempt?

Mr. JOHN W. MARSHALL. The investigative staff has been advised that Mr. Beam is touring Russia with a photographic exhibit sponsored by another Government agency and will not return to this country until February of 1977.

Mr. FLYNT. Does the return on the subpoena so state?

Mr. JOHN W. MARSHALL. I don't know, sir.

Mr. FLYNT. If it does not and if it was made by an investigator under the direction of you and Mr. Bowers, will you have the return on the subpoena reflect the contents of your testimony today?

Mr. JOHN W. MARSHALL. Yes, sir.

Mr. FOLEY. Are there any other questions of Mr. Marshall? If not, you are excused.

Mr. JOHN W. MARSHALL. Thank you very much.

[Witness excused.]

Mr. FOLEY. Without objection, the committee will stand in recess until 3 p.m.

[A brief recess was taken.]

Mr. FLYNT. The committee will come to order. Is Ms. Yamamoto present? Are you accompanied by counsel?

Ms. YAMAMOTO. Yes.

Mr. FLYNT. Would you and your counsel please come forward?

I will administer the oath.

Do you solemnly swear that the testimony which you will give before this committee in the matters now under investigation will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. YAMAMOTO. I do.

Mr. FLYNT. Ms. Yamamoto, the committee welcomes you, and we welcome your counsel to this session of the committee, and we express our appreciation to both of you for appearing.

TESTIMONY OF MS. CHERYL T. YAMAMOTO, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE, ACCOMPANIED BY STEPHEN J. KOVACIK, JR., COUNSEL

Mr. FLYNT. Mr. Counsel, will you proceed?

Mr. MARSHALL. Ms. Yamamoto, will you please state your full name and residence for the record?

Ms. YAMAMOTO. Cheryl Yamamoto, 4500 South Four Mile Run Drive, Apartment 620, Arlington, Va.

Mr. MARSHALL. You are appearing with counsel?

Ms. YAMAMOTO. That is correct.

Mr. MARSHALL. Counsel, would you identify yourself for the record?

Mr. KOVACIK. My name is Stephen J. Kovacik, Jr. I am counsel for Ms. Yamamoto, and am from Columbus, Ohio.

Mr. MARSHALL. Ms. Yamamoto, you are here pursuant to a subpoena served on you previously?

Ms. YAMAMOTO. That is correct.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolutions 1042 and 1054?

Ms. YAMAMOTO. Yes; I did.

Mr. MARSHALL. And a copy of the rules of this committee?

Ms. YAMAMOTO. Yes.

Mr. MARSHALL. A copy of the investigative procedures of this committee?

Ms. YAMAMOTO. Yes, sir.

Mr. MARSHALL. And a copy of the chairman's opening statement to these hearings?

Ms. YAMAMOTO. Yes, sir.

Mr. MARSHALL. The subpoena served upon you commanded you to produce certain records, documents, and other writings, including copies or drafts of the report of the House Select Committee on

Intelligence which were prepared pursuant to House Resolution 591. Do you have those documents in writing?

Ms. YAMAMOTO. I didn't bring anything home with me so I don't have anything to bring here.

Mr. MARSHALL. It is your testimony you have none of those documents in writing in your possession?

Ms. YAMAMOTO. I have none of the documents.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the House Select Committee on Intelligence, or classified information, or information which may tend to defame, degrade, or incriminate any person, would you please advise this committee so it may take appropriate action under the rules of the House of Representatives?

Ms. YAMAMOTO. I will.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee?

Ms. YAMAMOTO. No, sir.

Mr. FLYNT. Would counsel suspend briefly so that the Chair may observe for the record that at the time the committee was called to order, at the time Ms. Yamamoto and her counsel approached the witness table, that there was then and is now a quorum present for the purpose of taking testimony.

Proceed, Mr. Counsel.

Mr. FLYNT. Do you wish to present an oral statement to the committee at this time?

Ms. YAMAMOTO. No, sir.

Mr. MARSHALL. Ms. Yamamoto, what was your job title with the Select Committee on Intelligence?

Ms. YAMAMOTO. I was an investigator with the foreign and military intelligence section.

Mr. MARSHALL. When did you begin those duties with the select committee?

Ms. YAMAMOTO. June 15.

Mr. MARSHALL. Of what year?

Ms. YAMAMOTO. 1975.

Mr. MARSHALL. When did those duties terminate?

Ms. YAMAMOTO. February 28, 1976.

Mr. MARSHALL. Ms. Yamamoto, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Daniel Schorr, or to any other person?

Ms. YAMAMOTO. I did not.

Mr. MARSHALL. Do you know of anyone who did?

Ms. YAMAMOTO. I do not.

Mr. MARSHALL. Do you have any knowledge whatsoever of the circumstances surrounding the publication of that report or any part thereof?

Ms. YAMAMOTO. No, sir, I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. YAMAMOTO. No, sir.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or draft of that report to any member of the media or anyone acting on behalf of a member of the media?

Ms. YAMAMOTO. No, sir.

Mr. MARSHALL. Do you know of anyone who did?

Ms. YAMAMOTO. No, sir.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or make any part of that report available to anyone outside of the Select Committee on Intelligence?

Ms. YAMAMOTO. No, sir.

Mr. MARSHALL. Do you know anyone who did?

Ms. YAMAMOTO. No, sir.

Mr. MARSHALL. Those are all the questions I have, Mr. Chairman.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. Ms. Yamamoto, with the thanks of the committee, you may step down, and you are excused from your subpoena. The committee would like to express its appreciation to you and to your counsel for your appearance here today.

Mr. KOVACIK. Thank you, Mr. Chairman.

TESTIMONY OF SUSAN R. PAISNER, FORMER STAFF MEMBER, SELECT COMMITTEE ON INTELLIGENCE

Mr. MARSHALL. Ms. Paisner, is your counsel here yet?

Ms. PAISNER. No, he isn't, but I will go ahead anyway, rather than hold you up.

Mr. FLYNT. If you will come forward, before the oath is administered, I would like to make a statement to you that I would like to be on the record, Ms. Paisner. Have a seat at the table.

Ms. PAISNER. You have stated in response to a question from counsel—you are not under oath—but you have stated in response to a question from counsel that while you are present, your attorney has not arrived.

Ms. PAISNER. Right; he is not here.

Mr. FLYNT. Earlier, you stated that you would like to have him here, and just a minute ago I think you said you have no objections to proceeding.

Let me state the position of the committee on that. When an individual advises the committee or advises a member of the staff of the committee and that advice is communicated to me as chairman or to the temporary chairman of the committee, we certainly do not want to impose upon a witness, and we want to make every reasonable effort to be accommodating.

Have you place a call to ascertain whether your counsel is enroute?

Ms. PAISNER. Yes, I have. I called, and from what I can figure out, he is on his way here. I left a message for him to get here earlier, if possible, so I assume he has been informed. If it will work out better, I will wait until he gets here.

Mr. FLYNT. With him on the way, and out of courtesy to both you and him, I think it would be best not to proceed.

Ms. PAISNER. All right.

Mr. FLYNT. The committee will stand in informal recess, giving counsel a reasonable time in which to appear.

You are aware of the fact that both you and he were advised of the time you were expected to be reached on the witness list, but we are certainly not going to impose on you or him.

Ms. PAISNER. All right.

Mr. SWANNER. Would you let us know when he is in the room, please?

Ms. PAISNER. All right; I will.

Mr. FLYNT. The committee will stand in recess, subject to the call of the Chair.

[Brief recess.]

Mr. FLYNT. The committee will come to order. Ms. Paisner, would you please come forward?

The Chair announces that for the purpose of taking testimony and receiving evidence a quorum is present. Ms. Paisner, before you take the seat and I administer the oath, let me explain to you that you are entitled to a reasonable delay in testifying before the committee if your counsel is not present, if you so desire.

The Chair will go one step further and give you his assurance as best he can that in the event your counsel arrives and after being advised of that to which you have testified, if either you or he requests this committee to vacate the proceedings under which you testified, I think I can give you the assurance the committee will vacate those proceedings and let you retestify with counsel present.

Ms. Paisner. I appreciate that.

Mr. FLYNT. Are you prepared to testify without counsel being present?

Ms. PAISNER. Yes, I am.

Mr. FLYNT. Do you have any objection whatsoever to testifying without counsel being present?

Ms. PAISNER. No, I don't.

Mr. FLYNT. That being the case, would you please raise your right hand and let me administer the oath?

You do solemnly swear that the testimony you will give before this committee in matters now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. PAISNER. I do.

Mr. FLYNT. You may be seated.

The committee welcomes you to this session of the committee and we thank you for your appearance.

Counsel has some questions that he would like to ask you, and I wonder if you would satisfy yourself as I have satisfied myself that Ms. Paisner is willing to proceed without counsel.

Mr. MARSHALL. Ms. Paisner, would you please state your full name and address for the record?

Ms. PAISNER. Susan R. Paisner, 1832 Metzert Road, Adelphi, Md.

Mr. MARSHALL. Ms. Paisner, you have previously stated, and we need to restate it for the record since you are under oath, that you are appearing without counsel at present?

Ms. PAISNER. Yes.

Mr. MARSHALL. Ms. Paisner, as counsel for the committee, I want to tell you, you have the right of an attorney at this proceeding, that the committee will take such action as is necessary to protect that right. Do you understand that?

Ms. PAISNER. Yes; I do.

Mr. MARSHALL. It is of your free choice that you go forward and testify without counsel being present?

Ms. PAISNER. Yes.

Mr. MARSHALL. If at any point in the testimony you should change your mind, and you should feel the need for counsel, will you please advise the committee so it can take appropriate action?

Ms. PAISNER. Yes; I will.

Mr. MARSHALL. You are here pursuant to a subpoena having been served upon you?

Ms. PAISNER. That is correct.

Mr. MARSHALL. At the time that subpoena was served, you also received copies of House Resolutions 1042 and 1054?

Ms. PAISNER. That is correct.

Mr. MARSHALL. A copy of the rules of the House Committee on Standards of Official Conduct?

Ms. PAISNER. That is correct.

Mr. MARSHALL. A copy of the investigative procedures of this committee?

Ms. PAISNER. That is correct.

Mr. MARSHALL. And a copy of the chairman's opening statement to these hearings?

Ms. PAISNER. Yes.

Mr. MARSHALL. The subpoena commanded that you produce certain documents and writings described in the subpoena as well as any copies or drafts of the report of the House Select Committee on Intelligence which were prepared pursuant to House Resolution 591.

Do you have those documents or writings with you?

Ms. PAISNER. I have none of them with me at my home, so I had none to bring in.

Mr. MARSHALL. It is your testimony then you had none of those documents or writings in your possession at the time of the subpoena, or in your custody or control?

Ms. PAISNER. That is correct.

Mr. MARSHALL. In the event that your evidence or testimony may involve information or data concerning an executive session of the House Select Committee on Intelligence or classified information or information which may tend to defame, degrade, or incriminate any person, would you please advise this committee so it may take appropriate action under the Rules of the House of Representatives?

Ms. PAISNER. Yes; I will.

Mr. MARSHALL. Do you have a written statement you wish to file with the committee at this time?

Ms. PAISNER. I do not.

Mr. MARSHALL. Do you wish to present an oral statement to the committee at this time?

Ms. PAISNER. No.

Mr. MARSHALL. Ms. Paisner, what was your job title with the Select Committee on Intelligence?

Ms. PAISNER. I was a research assistant.

Mr. MARSHALL. When did you come to undertake those duties with the Select Committee?

Ms. PAISNER. September 2, 1975.

Mr. MARSHALL. When did your duties terminate?

Ms. PAISNER. February 29, 1976.

Mr. MARSHALL. Ms. Paisner, did you give the report of the Select Committee on Intelligence or a draft of any part of that report to Mr. Schorr or to any other person?

Ms. PAISNER. No; I did not.

Mr. MARSHALL. Do you know anyone who did?

Ms. PAISNER. No; I do not.

Mr. MARSHALL. Do you have any knowledge whatever of the circumstances surrounding the publication of that report or any part thereof?

Ms. PAISNER. No; I do not.

Mr. MARSHALL. Do you know of anyone who has such knowledge?

Ms. PAISNER. No.

Mr. MARSHALL. Did you divulge any part of the report of the Select Committee on Intelligence or a draft of such report to any member of the media or anyone acting on behalf of a member of the media?

Ms. PAISNER. No; I did not.

Mr. MARSHALL. Do you know anyone who did?

Ms. PAISNER. No.

Mr. MARSHALL. Did you give the report of the Select Committee on Intelligence or any part of that report to anyone outside the Select Committee?

Ms. PAISNER. No.

Mr. MARSHALL. Do you know anyone who did?

Ms. PAISNER. No.

Mr. MARSHALL. One final question, Ms. Paisner, which I must ask for the record: How old are you?

I want to be sure that you are of age in order to protect your rights so far as counsel—

Ms. PAISNER. You didn't ask anyone else.

Mr. MARSHALL. Let me withdraw the question. Are you over 21?

Ms. PAISNER. Yes; I am.

Mr. MARSHALL. That certainly satisfies the committee. I have no further questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Nothing except to comment that I am sure the question was really complimentary.

Ms. PAISNER. Thank you.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions, Mr. Chairman.

Mr. FLYNT. Ms. Paisner, I am sure that counsel asked that question because he thought you might have been considerably younger than 21 and we wanted to be sure that we were doubly protecting your rights.

Ms. PAISNER. I appreciate the concern.

Mr. FLYNT. We do thank you for appearing. We thank you for the responsive and responsible manner in which you have answered the questions and especially under the conditions where you expected your counsel to be present and he was not.

With the thanks of the committee you may step down, and you are excused from your subpena.

Ms. PAISNER. Thank you very much.

[The witness is excused.]

Mr. FLYNT. The Chair desires to make an announcement.

The hearings upon this subject will resume at 10 o'clock a.m. Tuesday morning, the 14th of September in room 2360. The Chair emphasizes that the hearings on this subject will resume at that time because the committee will meet again tomorrow at 10 o'clock pursuant to notice heretofore given on a different subject matter, but this matter will be again taken up by the committee—that is the matter pursuant to House Resolution 1042, on September 14, 1976.

Is there anything further to come before the committee at this time by any of the committee members?

Counsel has suggested that I state the hearings which have been scheduled for Tuesday, September the 14th, are in addition to and not in lieu of the meeting of this committee and hearings before this committee which were scheduled for Wednesday, the 15th of September, 1976.

Without objection, the committee stands adjourned.

[Whereupon, at 3:40 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, September 9, 1976.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

TUESDAY, SEPTEMBER 14, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m. in room 2360, Rayburn House Office Building, the Honorable John J. Flynt, Jr. [chairman of the committee], presiding.

Present: Representatives Flynt, Price, Teague, Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and Cochran.

Also present: John M. Swanner, staff director; John Marshall, legal counsel; David Bowers, investigator; Harvey Harkness, associate counsel; Jay Jaffe, staff member; Andrew Whalen, staff member; Miss Jan Loughry, committee staff.

Mr. FLYNT. The committee will come to order.

The staff director will please call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Here.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Here.

Mr. SWANNER. Mr. Price.

[No response.]

Mr. SWANNER. Mr. Quillen.

[No response.]

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

[No response.]

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

Mr. QUIE. Here.

Mr. SWANNER. Mr. Foley.

Mr. FOLEY. Present.

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Here.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Here.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Here.

Mr. SWANNER. Mr. Chairman, seven members answer present, five members absent, not voting.

Mr. FLYNT. A quorum is present.

(497)

The testimony which may come from a witness today will very likely be of a nature which would tend to defame, degrade, or incriminate one or more individuals. Accordingly, I recognize the gentleman from South Carolina for a motion.

Mr. SPENCE. Mr. Chairman, pursuant to the House rule XI 2(k) (5), I move that we go into executive session at this time.

Mr. FLYNT. You have heard the motion offered by Mr. Spence.

This is a motion which must be made in open session with a quorum of the committee being present. Under the rules of the House, this vote must be taken by rollcall. Is there further discussion? If not, the staff director will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Aye.

Mr. SWANNER. Mr. Spence.

Mr. SPENCE. Aye.

Mr. SWANNER. Mr. Price.

[No response.]

Mr. SWANNER. Mr. Quillen.

[No response.]

Mr. SWANNER. Mr. Teague.

[No response.]

Mr. SWANNER. Mr. Hutchinson.

[No response.]

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

Mr. QUIE. Aye.

Mr. SWANNER. Mr. Foley.

Mr. FOLEY. Aye.

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Aye.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Aye.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Aye.

Mr. SWANNER. Mr. Chairman, seven members answer aye, no members answer no, five members absent, not voting.

Mr. FLYNT. On this rollcall vote taken in open session, a quorum being present, and a quorum responding when their names were called, the yeas are seven, the nays are none. Accordingly, the motion of the gentleman from South Carolina is agreed to, and the committee goes into executive session.

[Whereupon, at 10:15 a.m., the committee proceeded in executive session.]

[The Committee resumed its open session at 7:35 p.m.]

Mr. FLYNT. Without objection, the following statement from David Bowers, received in executive session, will be included in the public record at this point.

Mr. BOWERS. Mr. Chairman, I have several items which I think should go into the public record.

During testimony on July 19, 1976, by Congressman Otis Pike, Chairman of the Select Committee on Intelligence, I stated he could not properly respond to questions regarding the release by staff of information on December 31, 1975, without having available to him for review the information which was released.

This information was furnished to Mr. Pike by letter from you, Mr. Chairman, on September 9, 1976. Mr. Pike, by letter of September 10, 1976, responded to your letter.

It is felt this exchange of correspondence should go into the public record. Copies of these letters have been made available to the Members of the committee in their folders.

Mr. FLYNT. Without objection, each of the letters which you referred to, Mr. Bowers, will be made a part of the public record.

[The letters referred to follow:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 10, 1976.

HON. JOHN J. FLYNT,
Chairman, House Committee on Standards of Official Conduct, Rayburn Building,
Washington, D.C.

DEAR JACK: I acknowledge receipt of your letter of September 9 with contents as stated therein. Having examined the contents contained within your letter and assuming the accuracy of all of the allegations contained in your letter, the answer to your question would have to be technically that providing a copy of the interview with Martin L. Kaiser dated December 30, 1975, to the press would appear to violate the employee agreement.

Having said that, it would be unfair not to say further that I consider the violation to be technical and minimal and not of substance. Martin L. Kaiser testified before our Committee in open session. The interview on Tuesday, December 30, 1975, with one exception, is a reiteration of what he had testified to in open session, he had been pressured by the F.B.I. to change his testimony. I feel very certain that had the Committee been meeting, this would have been raised in open session and the reiteration of the testimony would have been released to the public.

In view of the fact that two possible crimes are involved—one pertaining to the purchase practices of the F.B.I., the other pertaining to an attempt by the F.B.I. to pressure a witness before our Committee, I find nothing improper in the letter of Mr. Field to Attorney General Edward H. Levi.

Cordially,

OTIS G. PIKE.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., September 9, 1976.

HON. OTIS G. PIKE,
House of Representatives,
Washington, D.C.

DEAR OTIS: During your appearance before this Committee on 19 July 1976, during hearings held pursuant to H. Res. 1042, you were asked about an incident involving the alleged release of information in the possession of the Select Committee on Intelligence to members of the news media on 31 December 1975.

This Committee has received sworn testimony to the effect that on 31 December 1975, staff personnel of the Select Committee on Intelligence invited several newsmen, including Laurence Stern of the Washington Post, James Adams of Associated Press and Daniel Schorr of CBS, to the Committee office. These newsmen were briefed concerning the Committee's investigation regarding the purchase of electronic equipment by the F.B.I. from U.S. Recording Company. According to sworn testimony, the newsmen were allowed to review a deposition taken by members of the Select Committee staff from a witness on 30 December 1975.

During your appearance, you were asked if you had approved the above-described action, and you said you had not. You then were asked if you would consider the above-described action a violation of the Employee Agreement that

each staff person was asked to sign. You said you could not generalize and would want to know what the document was about and what the briefing was about.

I subsequently asked if you would respond if we supplied you a copy of the interview, and you replied :

"Certainly. I do not know—you would have to supply me not only the interview, but also what was released, because I just don't know."

Enclosed for your perusal is a copy of a letter dated 31 December 1975 from A. Searle Field, Staff Director of the Select Committee on Intelligence, to Attorney General Edward H. Levi. We have testimony that copies of this letter were furnished to the press on the date of the letter. Also enclosed for your perusal is a copy of a staff interview conducted on 30 December 1975 by Select Committee Counsel Richard Vermeire, Tim Oliphant and John Atkisson with Martin L. Kaiser in Timonium, Maryland. We have testimony to the effect that this is the deposition which newsmen were allowed to review in the offices of the Select Committee on Intelligence on 31 December 1975.

Also enclosed is a copy of an article captioned "Levi Asked to Probe FBI Act," which appeared under the byline of Laurence Stern in the Washington Post on 1 January 1976. This article reports information concerning the deposition taken from Mr. Kaiser, as well as the letter from Mr. Field to Attorney General Levi.

I also enclose for your ready reference a copy of the Employee Agreement which all staff members of the Select Committee on Intelligence were required to sign, and call your specific attention to item 5 which states :

"5. I further agree that until such time as the Committee has made its final report to the House I will not divulge to any unauthorized person in any way, form, shape or manner the work product or memoranda of the Committee or any material or testimony received or obtained pursuant to House Resolution 591, 94th Congress, unless specifically authorized by the Committee."

I would appreciate your perusal of the enclosed material and your response as soon as possible to the question as to whether or not you consider the release of the information as indicated therein on 31 December 1975 a violation of the Employee Agreement. Your early response is needed to complete this Committee's record concerning this matter.

With kindest personal regards.

Sincerely,

JOHN J. FLYNT, Jr.,
Chairman.

Mr. FLYNT. The committee is in open session, and the announcement of a lack of a quorum, without objection, will be made a part of the public record.

Mr. FOLEY. Mr. Chairman, I move the committee adjourn.

Mr. FLYNT. Without objection, the committee stands adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 7:37 p.m., the committee adjourned, to reconvene Wednesday, September 15, 1976, at 10 o'clock.]

INVESTIGATION OF PUBLICATION OF SELECT COMMITTEE ON INTELLIGENCE REPORT

WEDNESDAY, SEPTEMBER 15, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C.

The committee met, pursuant to notice at 10 a.m. in room 2175, Rayburn House Office Building, Hon. John J. Flynt, Jr. (chairman of the committee) presiding.

Present: Representatives Flynt, Price, Teague, Hébert, Foley, Bennett, Spence, Quillen Hutchinson Quie Mitchell and Cochran.

Also present: John M. Swanner, staff director; John Marshall, special counsel; David Bowers, chief special investigator; Harvey Harkness, associate special counsel; Jay Jaffe, staff member; Andrew Whalen, staff member; Miss Jan Loughry, staff member.

Mr. FLYNT. The committee will come to order.

The staff director will call the roll.

Mr. SWANNER. Mr. Flynt.

Mr. FLYNT. Here.

Mr. SWANNER. Mr. Spence.

Mr. Spence. Here.

Mr. SWANNER. Mr. Price.

[No response.]

Mr. SWANNER. Mr. Quillen.

Mr. QUILLEN Here.

Mr. SWANNER. Mr. Teague.

Mr. TEAGUE Here.

Mr. SWANNER. Mr. Hutchinson.

Mr. HUTCHINSON. Here.

Mr. SWANNER. Mr. Hébert.

[No response.]

Mr. SWANNER. Mr. Quie.

[No response.]

Mr. SWANNER. Mr. Foley.

Mr. FOLEY. Present.

Mr. SWANNER. Mr. Mitchell.

Mr. MITCHELL. Here.

Mr. SWANNER. Mr. Bennett.

Mr. BENNETT. Here.

Mr. SWANNER. Mr. Cochran.

Mr. COCHRAN. Here.

Mr. SWANNER. Mr. Chairman, nine members answered present, three members absent, not voting.

Mr. FLYNT. Nine members having responded to their names when the roll was called, a quorum is present.

(505)

At the beginning of the hearing on this subject, the Chair made an opening statement, a copy of which has been made available to all witnesses who have appeared before this committee during these hearings.

The Chair is not going to again read the opening statement in its entirety. But the Chair is going to read certain portions of the opening statement, and now proceeds to do so [reading:]

In recent months, the Congress of the United States has sought to take a more active role in the conduct of this Nation's foreign policy, and its concomitant intelligence operations.

In furtherance of these efforts, the House of Representatives established a Select Committee on Intelligence to conduct an inquiry into the organization, operations, and oversight of the intelligence community of the U.S. Government.

Section 2 and section 6 of House Resolution 591 required that Select Committee to establish and implement such rules and procedure as it deemed necessary to prevent the unauthorized disclosure outside the Select Committee of "any information relating to the activities of the Central Intelligence Agency, or any other department or agency of the Federal Government engaged in intelligence activities obtained by the Select Committee during the course of its study and investigation," and to prevent "the disclosure outside the Select Committee of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries, or the intelligence activities in foreign countries of any other department or agency of the federal government."

The House of Representatives, on February 19, 1976, adopted House Resolution 1042, which authorized and directed this committee to inquire into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and to report back to the House its findings and recommendations thereon.

The House of Representatives has the authority, indeed the duty, to investigate possible violations of its resolutions and protective orders by those subject to its jurisdiction in order to protect the integrity of the legislative process.

These hearings are being held for the purpose of inquiring into, as fully as possible, the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and reporting back to the House its findings and recommendations.

The congressional power in question concerns the internal processes of Congress moving within its legislative command. It involves the utilization of the Committee on Standards of Official Conduct, to secure testimony and evidence needed to enable the House to investigate and exercise legislative functions, properly belonging to the House of Representatives under the U.S. Constitution.

Committee Counsel will proceed.

Mr. MARSHALL. Call as the first witness Mr. Clay S. Felker.

Mr. FLYNT. Mr. Felker, would you remain standing and let me administer the oath? Do you solemnly swear that the testimony you will give before this committee in the matters now under investigation will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FELKER. I do.

Mr. FLYNT. Be seated.

**TESTIMONY OF CLAY S. FELKER, PUBLISHER, VILLAGE VOICE,
ACCOMPANIED BY THEODORE W. KHEEL, ATTORNEY**

Mr. MARSHALL. Mr. Felker, would you state your name and address for the record, please?

Mr. FELKER. Clay S. Felker, 755 Second Avenue, New York City.

Mr. MARSHALL. You are appearing here with counsel?

Mr. FELKER. Yes; I am.

Mr. MARSHALL. Counsel, you may identify yourself.

Mr. KHEEL. My name is Theodore W. Kheel, of New York. I am counsel generally for the New York Co., which is the owner of New York Magazine and the Village Voice, and I am here representing Mr. Felker, as well as Mr. Zalaznick and Mr. Latham.

Mr. MARSHALL. Mr. Felker, you are here pursuant to a subpoena duces tecum which was served upon you prior to this hearing.

Mr. FELKER. That is right.

Mr. MARSHALL. At the time that the subpoena was served upon you, you received copies of House Resolution 1042 and 1054, authorizing this investigation; a copy of the Rules of the House of Representatives and the Rules of this Committee; a copy of the Investigative Procedures which were adopted by this committee, and a copy of the chairman's opening statement for these hearings; is that correct?

Mr. FELKER. Yes.

Mr. MARSHALL. In the event your evidence or testimony may involve material from an executive session of the House Select Committee on Intelligence, or information which is classified or information which may tend to defame, degrade or incriminate any person, would you please advise this committee so that it may take appropriate action under the Rules of the House of Representatives?

Mr. FELKER. Yes.

Mr. MARSHALL. The subpoena duces tecum served upon you prior to the hearing demanded that at this hearing you produce certain papers, including any and all copies or drafts of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591. Do you have any of those papers with you to produce at this hearing?

Mr. FELKER. No; we have no papers.

Mr. MARSHALL. Your statement is that you have no papers in your custody, control, or possession to produce?

Mr. FELKER. That is right.

Mr. MARSHALL. Do you have a statement which you wish to file with or make to this committee?

Mr. FELKER. Yes; I have a very brief statement.

Mr. MARSHALL. You may proceed.

Mr. FELKER. Last February a draft report of the Select Committee on Intelligence of the House of Representatives was published in two successive issues of the Village Voice. We three individuals, I, as the editor in chief and publisher of the Village Voice, and two senior editors of New York Magazine, a sister publication, were responsible for deciding to print and for preparing for publication the material published in the Village Voice. Our role and that of our publication began only after the report became available for publication. We did not then and we do not now think that discovering the source of the report would add to public understanding of its contents and we therefore make no effort to identify the source. We do not know the source. That being said, we wish to emphasize our support for the position taken by Dan Schorr. We believe he acted responsibly as a

journalist and a citizen in making the text of the draft report available for publication, and we believe that he will act in the highest traditions of our profession and of the first amendment itself by refusing to disclose to this committee or to any other governmental body the identity of his source. We would do the same today if we knew the identity of the source just as we would have refused to have disclosed the identity of our source, Dan Schorr, himself, had he not made it public. As Dan Schorr at considerable personal risk defends the journalistic and constitutional principles at stake today, we honor him, and we believe he deserves the honor and thanks of our Nation.

Mr. KHEEL. Mr. Marshall, may I say that that statement is also submitted in behalf of Mr. Zalaznick and Mr. Latham.

Mr. MARSHALL. It will be so received.

Mr. Felker, what is your position with the newspaper named the Village Voice?

Mr. FELKER. I am the editor in chief and the publisher of the Village Voice.

Mr. MARSHALL. Did you hold that position with the Village Voice when the editions of February 16 and February 23, 1976, were published?

Mr. FELKER. I did.

Mr. MARSHALL. Now, the February 16 and 23 editions of the Village Voice printed a part of the text of the report prepared by the House Select Committee on Intelligence. Your opening statement said that Mr. Schorr made the text of that report available to the Village Voice for publication on that date, is that right?

Mr. FELKER. That is right.

Mr. MARSHALL. When did Mr. Schorr first contact you concerning the report?

Mr. FELKER. Mr. Schorr never contacted me. A representative of the Reporters Committee on Freedom of the Press contacted me, and said that the report was available for publication in the Village Voice, or the report was available for publication in any of our publications, and was I interested. And I said that I was. And subsequently that report was made available.

Mr. MARSHALL. When was that contact by the representative of the Reporters Committee for Freedom of the Press?

Mr. FELKER. It was on a Wednesday night that I first heard about it, prior to publication the following week on Wednesday. And the report came into our hands on midday Friday.

Mr. MARSHALL. Was the representative of the Reporters Committee who contacted you a member of that committee, or was it someone you understood to be acting on behalf of that committee?

Mr. FELKER. He was someone who made it very plain in the first sentence that he spoke to me that he was acting as a representative of that committee.

Mr. MARSHALL. Who was that person?

Mr. FELKER. Peter Tufo.

Mr. MARSHALL. Mr. Tufo is an attorney?

Mr. FELKER. He is a New York attorney, yes.

Mr. MARSHALL. Now, who first received the text of the report on behalf of the Village Voice, that is the physical document?

Mr. FELKER. My assistant, Susan Parker.

Mr. MARSHALL. Is it correct that Mrs. Parker came to Washington to pick up that document from Mr. Schorr?

Mr. FELKER. Yes.

Mr. MARSHALL. All right. And the document was delivered to Mrs. Parker on February 6, 1976, is that correct?

Mr. FELKER. Yes.

Mr. MARSHALL. Now, during the time that the Village Voice had the document, did you deal directly with Mr. Schorr concerning the publication, or did someone on your staff of the newspaper, or the newspaper staff handle those responsibilities?

Mr. FELKER. No one at any time had any contact with Mr. Schorr prior to publication of this document.

Mr. MARSHALL. At the time you were contacted by Mr. Tufo, did somebody else handle the negotiations with Mr. Schorr about delivery of the document?

Mr. FELKER. I do not know who was in contact with Mr. Schorr, but we were not.

Mr. MARSHALL. Now, do you have any knowledge whatsoever how or from whom Mr. Schorr obtained the copy of the report he made available to the Village Voice for publication?

Mr. FELKER. None whatsoever.

Mr. MARSHALL. Did Mr. Schorr ever communicate to you or to anyone else to your knowledge how or from whom he obtained the report?

Mr. FELKER. Never.

Mr. MARSHALL. Did you or anyone else to your knowledge ask Mr. Schorr from whom he obtained the report or how he obtained the report?

Mr. FELKER. No.

Mr. MARSHALL. Do you know of anyone other than Mr. Schorr himself who may have knowledge about how or from whom he obtained the report?

Mr. FELKER. No.

Mr. MARSHALL. After Mr. Schorr made the text of the report available to the Village Voice, did your staff or anyone acting on behalf of the Village Voice make copies of that document Mr. Schorr delivered?

Mr. FELKER. Yes; we made two or three copies.

Mr. MARSHALL. Do you know how many copies precisely?

Mr. FELKER. Not exactly certain. It is either two or three.

Mr. MARSHALL. And where are those copies now?

Mr. FELKER. They have been thrown away.

Mr. MARSHALL. Do you know that based on your personal knowledge, or have you simply been informed that by someone else?

Mr. FELKER. I am reasonably certain that they have been thrown away.

Mr. MARSHALL. To whom were those copies delivered at the time copies were made of the document Mr. Schorr supplied?

Mr. FELKER. Well, one was delivered to me, one was delivered to Mr. Zalaznick, and one to Mr. Latham.

Mr. MARSHALL. Did you personally destroy the copy that was delivered to you?

Mr. FELKER. After I read it, I threw it away, I put it in my wastebasket and threw it away.

Mr. MARSHALL. So it went out with the garbage?

Mr. FELKER. That is right.

Mr. MARSHALL. When you read the copy of the report which was supplied to you, did the report have any markings and handwriting on the margin which were Xeroxed markings at the time?

Mr. FELKER. I really cannot recall whether it did or not. I was reading the report very rapidly, and to the best of my knowledge, I cannot recall any markings.

Mr. MARSHALL. Did any pages appear to be missing?

Mr. FELKER. Yes; there were at least one page and perhaps several—although I was just skimming the report to establish certain kinds of information, and I was not aware of how many pages precisely were missing.

Mr. MARSHALL. Did the copy of the report which you read have footnotes in the text?

Mr. FELKER. Yes.

Mr. MARSHALL. Were these footnotes published?

Mr. FELKER. Some were and some weren't.

Mr. MARSHALL. In the Village Voice at the time of publication, there was a statement that some of the footnotes had been trimmed because of space problems in publication. Is that statement correct, sir?

Mr. FELKER. Yes.

Mr. MARSHALL. Who made the decision about trimming certain portions of the report?

Mr. FELKER. These—this was an editorial decision reached by the editors involved in the editing of this document.

Mr. MARSHALL. This was a joint committee type decision?

Mr. FELKER. It was a decision that was made by the editors of the magazine and the newspaper.

Mr. MARSHALL. When you say the magazine, do you mean the New York Magazine?

Mr. FELKER. Yes.

Mr. MARSHALL. And the editors of the Village Voice?

Mr. FELKER. Yes.

Mr. MARSHALL. Now, did the Village Voice pay any money to any person, firm, or corporation in return for publishing the report in the editions of the Village Voice for February 16 and February 23, 1976?

Mr. FELKER. No.

Mr. MARSHALL. Were there any discussions with any persons, firm, or corporation about payment of money?

Mr. FELKER. There was no discussion about the payment of money for this report.

Mr. MARSHALL. Did you have any discussions with Mr. Schorr concerning the payment of money for the report?

Mr. FELKER. I never talked to Mr. Schorr.

Mr. MARSHALL. To your knowledge, did anyone acting on behalf of the Village Voice or the New York Magazine have any discussions with Mr. Schorr about the payment of money for the report?

Mr. FELKER. No one acting on the part of our organization had any discussions of any nature at any time with Mr. Schorr.

Mr. MARSHALL. There have been certain statements in the press that financial arrangements were made with the Reporters Committee for

Freedom of the Press in return for the Village Voice being given access to the report and being given the ability to publish the report. Are those statements incorrect to your knowledge?

Mr. FELKER. They are incorrect.

Mr. MARSHALL. Did the Village Voice or New York Magazine, or anyone acting on behalf of those publications, or those legal entities, have any negotiations at all with the Reporters Committee for Freedom of the Press about making a money payment to the reporters committee in return for access to and publication of the report?

Mr. FELKER. There were no negotiations per se. There was a discussion, a request, that we consider making a contribution to the reporters committee. However, the request was not made contingent upon the publication of the report. The report was made available to us, no strings attached.

Mr. MARSHALL. Who made the request that the Village Voice consider making a contribution or payment to the Reporters Committee for Freedom of the Press?

Mr. FELKER. Mr. Tufo.

Mr. MARSHALL. Did you understand him to be acting on behalf of Mr. Schorr at that time?

Mr. FELKER. He was acting on the part of the reporters committee.

Mr. MARSHALL. Is it your testimony that Mr. Schorr supplied the report to the Village Voice, but that the reporters committee, without any relationship to that report being made available, then sort of out of the blue made a request for contributions from your magazine?

Mr. FELKER. I would imagine that the reporters committee, in order to carry on its work, is probably always looking for money.

Mr. MARSHALL. But is it your testimony that the reporters committee had no reasonable relationship to the report being made available, at the time, that it made the request for a contribution?

Mr. FELKER. I do not know what the relationship was. It had nothing to do with the publishing of this report.

Mr. MARSHALL. Did you have any information that making the report available to the Village Voice and the request from the reporters committee had any connection whatsoever?

Mr. FELKER. I did not feel there was any connection.

Mr. MARSHALL. The two were totally unrelated in your judgment?

Mr. FELKER. In my judgment, they were unrelated.

The report was made available to us, no strings attached.

Mr. MARSHALL. Were you the person that talked directly with Mr. Tufo concerning the Reporters Committee's request?

Mr. FELKER. Yes.

Mr. MARSHALL. During those conversations, did Mr. Tufo at any time mention to you that his request was because of Mr. Schorr's making the report available to you?

Mr. FELKER. No.

Mr. MARSHALL. That subject was never discussed?

Mr. FELKER. The subject of—that we were discussing, had to do with whether we would be interested in publishing the report. After that was discussed and settled, we began to talk about the possibility of a contribution on the part of our company.

Mr. MARSHALL. The two matters were then related in time. You first discussed having the report being made available for publication,

and then you and Mr. Tufo discussed the contribution to be made to the Reporters Committee, is that correct?

Mr. FELKER. One was not contingent upon the other.

Mr. MARSHALL. That was not my question, sir. I am saying insofar as point of time is concerned, you first made whatever arrangements were made in connection with the publication of the report and getting access to it, and you then dealt with Mr. Tufo on the subject of making a contribution to the Reporters Committee, is that your testimony?

Mr. FELKER. It took place within the same framework of time, yes.

Mr. MARSHALL. And you understood the two to be related somewhat, did you not?

Mr. FELKER. No, I didn't understand the two to be related.

Mr. MARSHALL. Those are all the questions I have at this time, Mr. Chairman.

Mr. FLYNT. Mr. Price.

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Teague.

Mr. TEAGUE. No questions.

Mr. FLYNT. Mr. Hutchinson.

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Hébert?

Mr. HÉBERT. No questions.

Mr. FLYNT. Mr. Quie.

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Foley.

Mr. FOLEY. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Cochran.

Mr. COCHRAN. Mr. Chairman, I have one question for the witness.

Mr. Felker, at the time the Village Voice actually published the report, were you aware that the House of Representatives had voted by a substantial margin to refrain from permitting publication of that document?

Mr. FELKER. Yes.

Mr. COCHRAN. I have no further questions, Mr. Chairman.

Mr. FLYNT. Counsel?

The witness may step down.

Will committee counsel call the next witness.

Mr. MARSHALL. Call Mr. Aaron Latham to the witness stand.

TESTIMONY OF AARON LATHAM, SENIOR EDITOR, NEW YORK MAGAZINE, ACCOMPANIED BY THEODORE W. KHEEL, ATTORNEY

Mr. FLYNT. Mr. Latham, would you raise your right hand please? You do solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LATHAM. I do.

Mr. FLYNT. Please be seated.

Mr. MARSHALL. Mr. Latham, would you state your name and address for the record, please?

Mr. LATHAM. Aaron Latham.

Mr. MARSHALL. Where do you live, sir?

Mr. LATHAM. 223 East 72d Street, New York City.

Mr. MARSHALL. Mr. Latham, you are appearing here with counsel?

Mr. LATHAM. I am.

Mr. MARSHALL. Counsel, you may identify yourself for the record.

Mr. KHEEL. Theodore W. Kheel. My affiliations have previously been entered in the record.

Mr. MARSHALL. Thank you.

Mr. Latham, you are here pursuant to a subpoena duces tecum which has been served upon you prior to your appearance today?

Mr. LATHAM. That is correct.

Mr. MARSHALL. At the time the subpoena was served upon you, you also received copies of the House Resolution 1042 and 1054, copies of the Rules of the House of Representatives, and the rules of this committee, a copy of the investigative procedures which were adopted by this committee, and a copy of the chairman's opening statement for these hearings, is that correct?

Mr. LATHAM. That is correct.

Mr. MARSHALL. In the event that your testimony or evidence may involve material from an executive session of the House Select Committee on Intelligence or information which is classified, or information which may tend to defame, degrade or incriminate any person, would you please advise this committee so that it may take appropriate action under the Rules of the House of Representatives?

Mr. LATHAM. I will.

Mr. MARSHALL. The subpoena duces tecum served upon you prior to this hearing demands that you produce at this hearing certain papers, including any and all copies or drafts of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591. Do you have those papers with you?

Mr. LATHAM. I haven't brought anything. I don't have anything that I thought was covered by the subpoena.

Mr. MARSHALL. It is your statement, then, that there were no papers in your custody, control or possession which were covered by the subpoena?

Mr. LATHAM. Well, I have no copies of the Pike committee report in my possession.

Mr. MARSHALL. Do you have a statement that you wish to make on file with the committee at this time?

Mr. LATHAM. Well, I would like to say just a few words.

I think that it tends to have a chilling effect upon journalists to be compelled to come before a congressional committee. I believe that no matter how benign the questions, these questions tend to erode the first amendment. And I believe that any intimidation of reporters, intentional or unintentional, tends to compromise what the first amendment sought to protect. Therefore, I feel that I shouldn't have been compelled to come here, or that Daniel Schorr should not have been compelled to come here.

That is all I have to say.

Mr. MARSHALL. Mr. Latham, where are you presently employed?

Mr. LATHAM. At New York Magazine.

Mr. MARSHALL. And could you give us a description of your duties with the magazine?

Mr. LATHAM. Well, my official title is senior editor. What that really means is that I cover Washington for New York Magazine.

Mr. MARSHALL. Mr. Latham, were you employed in any capacity by the Village Voice when the February 16 and February 23, 1976, editions of that paper were published?

Mr. LATHAM. Well, this is a tiny bit complicated. I am employed by New York Magazine. New York Magazine owns a controlling interest in the Village Voice. And I was assigned to write the introduction to the Pike committee papers. However, I have never been on the payroll of the Village Voice.

Mr. MARSHALL. Now, when the text of the report was published in the February 16 and February 23, 1976, editions of the Village Voice, is it your testimony that you wrote the introduction to that text?

Mr. LATHAM. That is correct.

Mr. MARSHALL. Did you have anything else to do with the publication of the report in those editions of the Village Voice?

Mr. LATHAM. I was the one to Xerox the report.

Mr. MARSHALL. All right.

How many copies did you make?

Mr. LATHAM. I believe that I Xeroxed three copies of the report. And we are trying to keep this terribly secret, that we had the report within our company. And so everybody formed a line behind me at the Xerox machine, and I told everyone I was Xeroxing a copy of a novel that I had written.

Mr. MARSHALL. I see.

After making three copies, you then had a total of four copies in your possession?

Mr. LATHAM. That is my memory; right.

Mr. MARSHALL. All right. Now, to whom did you deliver those copies?

Mr. LATHAM. I believe that one went to Shelly Zalaznick—no, two went to Shelly Zalanznick, one went to Clay Felker, and I took one.

Mr. MARSHALL. Where is your copy of the report; that is, the copy you took?

Mr. LATHAM. After we published the report, we decided that we should return the report to Daniel Schorr, who had given it to us in the first place. I contacted his lawyer's office. They said they would receive it. And I carried it over to Mr. Califano's office, and delivered it back to Mr. Schorr in that manner.

Mr. MARSHALL. On what date was the report delivered back to Mr. Schorr?

Mr. LATHAM. Well, it was shortly after we published it, but I do not know exactly when.

Mr. MARSHALL. When you say "shortly after we published it," do you mean at the time the February 16 edition was made public and published?

Mr. LATHAM. We published it on 2 successive weeks. It was after we had completed publishing both weeks, that I returned my copy to Daniel Schorr's lawyer.

Mr. MARSHALL. Now that leaves three copies to account for. Do you know what happened to Mr. Felker's copy?

Mr. LATHAM. Well, he has told me that he threw it away.

Mr. MARSHALL. What about Mr. Zalaznick's two copies?

Mr. LATHAM. He has told me that he threw those away.

Mr. MARSHALL. Now, prior to the time you wrote the introduction to the piece that appeared in the February 16 and February 23 editions of the Village Voice, did you have any contact with Mr. Schorr?

Mr. LATHAM. I did not have any contact with Mr. Schorr having to do with the publication of the report.

Mr. MARSHALL. Did you have any contact with Mr. Schorr dealing with the subject matter of the piece that you were going to write an introduction to?

Mr. LATHAM. No, I didn't.

Mr. MARSHALL. Your contacts were totally unrelated to that subject?

Mr. LATHAM. Right. I mean, just to make it clear, I hadn't—I hadn't talked to him for about a year before we got the copy of the report.

Mr. MARSHALL. Now, do you have any knowledge whatsoever of how or from whom Mr. Schorr got the copy of the report he made available to the Village Voice for publication?

Mr. LATHAM. Well, I have some trouble personally answering questions about sources at all. We have said in our opening statement that we do not know who Mr. Schorr's source was. And I don't know who Mr. Schorr's source was. To the broader question of any information whatsoever, I would respectfully decline to answer.

Mr. MARSHALL. On what grounds?

Mr. LATHAM. The first amendment protection of sources.

Mr. FLYNT. Mr. Latham, at this time I must advise you that this committee is acting pursuant to the authority vested in it by Resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of the report were obtained and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry and will subject you to prosecution and punishment by fine or imprisonment or both under title II of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are hereby advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. KHEEL. Mr. Chairman, if I may, the witness has testified under oath that he does not know who the source was. I am a little at a loss to know what is the question that you say he has refused to answer bearing on this subject.

Mr. MARSHALL. If I may respond, Mr. Chairman.

Mr. FLYNT. Counsel for the committee will respond.

Mr. MARSHALL. The question put to the witness asked for a response as to whether he had any knowledge of who Mr. Schorr's source was. As I recall his response, it was that he did not personally know, but that he was unwilling to provide this committee with any knowledge he might have of the source, And it is that question which the witness is being asked to answer at this time.

Mr. KHEEL. Do you understand that to be the question?

Mr. LATHAM. Well, I would hate to pretend to know something that I don't. And I do not know who Mr. Schorr's source is. But as to the question of do I have any knowledge whatsoever, I respectfully decline to answer.

Mr. MARSHALL. Let me inquire of the witness—did you understand the statement made by the chairman—

Mr. LATHAM. I did.

Mr. MARSHALL [continuing]. As to the possible consequences of your refusal to answer?

Mr. LATHAM. Yes, sir.

Mr. MARSHALL. And do you still persist in that refusal?

Mr. LATHAM. Yes, sir.

Mr. FLYNT. Committee counsel will now put the next question to the witness.

Mr. MARSHALL. Going back to the copies that you said you made of the report when it was delivered to the Village Voice, did those copies have any handwritten markings on any page at the time you made the Xerox copy?

Mr. LATHAM. Well, what I took home and read was a Xerox of a Xerox of a Xerox, so it was impossible to tell what generation the marks were. However, there were some marks on the report.

Mr. MARSHALL. Were they markings which appeared in the margin of the report as though someone had made notes at the time the report was being read?

Mr. LATHAM. There were a few such markings.

Mr. MARSHALL. Were they in handwriting?

Mr. LATHAM. Well, I remember there were markings on the manuscript.

Mr. MARSHALL. What I am trying to ascertain, Mr. Latham, is the nature of those markings, if you can recall.

Mr. LATHAM. It was almost virtually a clean copy. It seems to me that there may have been one or two words written in the margin.

Mr. MARSHALL. Do you remember what those words were?

Mr. LATHAM. No; I don't.

Mr. MARSHALL. Were any lines of the report underlined in pencil or pen or other marking that you recall?

Mr. LATHAM. As I recall there were some underlinings.

Mr. MARSHALL. Were any pages of the report missing as they appeared to you at the time you Xeroxed the report?

Mr. LATHAM. As we stated when we published the report, there were—I believe we stated there were two pages missing and we put a bracket in what we published, saying there is a page missing here.

Mr. MARSHALL. Do you recall what pages those were?

Mr. LATHAM. I remember one page was the beginning of the whole section on whether we did or did not betray the Kurds in their rebellion in Iraq. The other page I don't remember at all.

Mr. MARSHALL. Were the references made in the Village Voice at the time the report was published correct insofar as they referred to the pages that were missing?

Mr. LATHAM. They were correct.

Mr. MARSHALL. Now, did the copy of the report that you Xeroxed have any footnotes on it?

Mr. LATHAM. It did.

Mr. MARSHALL. As I understand the earlier testimony, some of those footnotes were published and others were not, is that correct?

Mr. LATHAM. That is correct.

Mr. MARSHALL. Now, did you take part in any discussions about making a money payment to anyone in return for the Village Voice having the report made available to it?

Mr. LATHAM. I did not.

Mr. MARSHALL. Those are all the questions I have at this time, Mr. Chairman.

Mr. FLYNT. Mr. Price?

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Teague?

Mr. TEAGUE. No questions.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. Latham, I believe you stated that you had had no contact whatsoever with Mr. Schorr.

Mr. LATHAM. I hadn't had any contact with Mr. Schorr for perhaps a year before we acquired this report. That is correct.

Mr. QUILLEN. Did anyone from the New York Magazine or the Village Voice have any contact with Mr. Schorr in regard to the report before it was published or after?

Mr. LATHAM. I believe—although I had nothing to do with it—that a few days after we published, there was some contact after we published the report.

Mr. QUILLEN. What was that contact, Mr. Latham?

Mr. LATHAM. Well, I am not your best witness on this, but I believe Dan Schorr had the courtesy to call Clay Felker and read him a statement in which Dan Schorr admitted that he had been our source for the report.

Mr. QUILLEN. I believe the report was picked up from Mr. Schorr's home here in Washington, D.C.

Mr. LATHAM. Right.

Mr. QUILLEN. By a secretary to Mr. Felker?

Mr. LATHAM. Right.

Mr. QUILLEN. If no contact had been made with Mr. Schorr prior to that, how did the Village Voice or the New York Magazine know where that report was?

Mr. LATHAM. Through—well, again I had nothing to do with these negotiations, but my understanding is that it was through the intermediary who arranged for us to acquire the report.

Mr. QUILLEN. Who was that intermediary?

Mr. LATHAM. Well, as has been published several times, it was the lawyer, Peter Tufo.

Mr. QUILLEN. I beg your pardon?

Mr. LATHAM. I say, as has been reported in the press, the negotiator—or the person who supplied the report to us, or contacted us, was Peter Tufo, the New York lawyer.

Mr. QUILLEN. You know to your personal knowledge that he made the contact with Mr. Schorr and set up the delivery time, and someone dispatched a secretary to Washington, D.C., to pick up something they didn't know what it was?

Mr. LATHAM. Of my own personal knowledge, I don't know any of that.

Mr. QUILLEN. The copy of the report that you had was returned to Mr. Schorr?

Mr. LATHAM. It was returned to the law offices of Joseph Califano, his attorney.

Mr. QUILLEN. Was that the copy that was picked up in Washington, D.C., to your knowledge?

Mr. LATHAM. Well, this is speculation, but I believe that it was a copy of the copy that we picked up in Washington.

Mr. QUILLEN. When you wrote your introduction, did you know that the House of Representatives had acted by tremendous majority vote not to release that report?

Mr. LATHAM. Well, I knew that a third of the Congress had voted to release it. But also I made a note of the fact that the Congress had voted not to release the report in the introduction itself.

Mr. QUILLEN. Because it contained classified and secret material? Did you know that, Mr. Latham?

Mr. LATHAM. All I knew was that the House had voted not to release the report.

Mr. QUILLEN. Did you know that, Mr. Latham?

Mr. LATHAM. I knew the House had voted not to release the report until the President had sanitized it.

Mr. QUILLEN. Did you read the colloquy in the Congressional Record where it was pointed out that it did in fact contain secret and classified information?

Mr. LATHAM. Well, I didn't read the colloquy in the Record. However, in anything that you publish, there is a certain balancing and a certain tradeoff. And we thought we were doing the country a service by publishing this report, which—we thought Congress had done the service in compiling the report.

Mr. QUILLEN. What country do you think that you provided a service for in publishing the report?

Mr. LATHAM. I believe the United States of America. We showed that we could investigate our own wrongdoing.

Mr. QUILLEN. In other words, irrespective of the action of the Congress of the United States, you, in writing your introductory remarks, and as the senior editor, felt that you had the authority and the ability to go beyond the dictation of the Congress, and that you knew more about what was good for the United States of America than 435 Members elected by the people?

Mr. LATHAM. I believe that that is why the first amendment was written, to give the press that authority. And I did feel that we were doing the country a service, and again that the committee, the Pike committee, had done the country a service in bringing to light some of the seamier details of espionage work and trying to make sure it doesn't happen again.

Mr. QUILLEN. Mr. Chairman, I will not prolong this. But I am compelled to say that the security of my country means more than anything else that I can remember at this point. We only have one country, and when that country is gone, we have something else. Newspapers come and go. But our country remains forever. And a free press helped maintain that freedom, and helps maintain the insurance that our country will go on forever. But I am appalled that someone would take in their own hands the determination, against the will of Congress, that certain material, materials were not classified or secret. And I think that it is just unbelievable to me here this morning that we would have that attitude reflected by great publications in this country. Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Hébert.

Mr. HÉBERT. No questions.

Mr. FLYNT. Mr. Hutchinson.

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Foley.

Mr. FOLEY. No questions.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Well, I am not quite sure that I understood the question and the answer which gave rise to the discussion. I am not sure whether or not you are saying that you don't have any knowledge or opinion, or that you won't express what that knowledge or opinion is. So I would like to ask you, to clarify it—maybe it is already in the record—do you have any opinion or knowledge as to who may have given the material to Mr. Schorr?

Mr. LATHAM. Well, I don't know who gave the material to Mr. Schorr. And as to whether I have any opinion, I decline to answer.

Mr. BENNETT. No further questions.

Mr. FLYNT. Mr. Bennett, would you suspend?

Mr. LATHAM, I must at this time—

Mr. MITCHELL. Mr. Chairman—I'm sorry.

Mr. FLYNT. Mr. Latham, I must at this time advise you that this committee is acting pursuant to the authority vested in it by House Resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the Chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry, in that it would be evidence as to the source from which the unauthorized publication took place, the source from which Mr. Schorr obtained it; and that this constitutes evidence of the circumstances surrounding publication of the text and any part of that report. Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry, and will subject you to prosecution and punishment by a fine or imprisonment or both, under title II of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the U.S. House of Representatives.

Accordingly, you are hereby advised that your objection to the question and your grounds for refusing to answer the question are overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. LATHAM. I respectfully decline to answer.

Mr. KHEEL. Mr. Chairman, may I state for the record again that the witness has said under oath that he has no knowledge—that he does not know who the source is, and that the question, does he have any knowledge, calls for speculation at best, and that the record should so indicate.

Mr. BENNETT. I think counsel used the word “opinion.” You said “knowledge.”

Mr. KHEEL. I believe Mr. Marshall said that the question was did he have any knowledge.

Mr. BENNETT. On that question he replied that he had no knowledge, and he said he did not want to express his opinion. And in your summary, you used the word “knowledge.”

Mr. KHEEL. Thank you very much. And I say that that is speculation.

Mr. MARSHALL. So that the record may be clear—is it Mr. Latham’s position that under oath he has no knowledge of the circumstances under which Mr. Schorr obtained the report, and he is making that statement under oath?

Mr. KHEEL. He has stated under oath that he had no knowledge of who the source is.

Mr. MARSHALL. Let me ask him if he will reaffirm that statement under oath, because it may be we can clear up simply a matter of semantics here.

Mr. KHEEL. Yes; I think that would be well to do.

Mr. LATHAM. Well, I do not know who the source is, and I decline to express any opinion or to say whether I have any knowledge whatsoever, which is the question put to me.

Mr. MARSHALL. You understand that the question that was put to you earlier, by me, asked not for your opinion, but whether you had any knowledge concerning the source, Mr. Schorr's source. Did you understand that question?

Mr. LATHAM. Well, I believe I do, and I would like to stand on my answer.

Mr. MARSHALL. All right.

And you understand, in standing on your answer, and on those grounds, that the chairman has instructed you as to consequences of that position? Do you understand, sir?

Mr. LATHAM. That is correct.

Mr. MARSHALL. I think the record is now clear, Mr. Chairman.

Mr. FLYNT. Mr. Bennett.

Mr. BENNETT. I think his answer to my question was clear. The only thing I was trying to clarify, I think counsel just by a slip of the tongue put the word "knowledge" in when it should have been "opinion," because he went on to explain it as if he was talking about opinion. I think the record is clear.

Mr. MARSHALL. Mr. Bennett, so that the record will be clear, my intent was to ask the question concerning knowledge and not opinion.

Mr. KHEEL. Mr. Marshall, knowledge of what?

Mr. MARSHALL. Knowledge of the circumstances surrounding Mr. Schorr's obtaining of the select committees report. Any knowledge relating to those circumstances including knowledge of the source.

Mr. KHEEL. Well, he has no knowledge of the source. He doesn't know who the source is.

Mr. MARSHALL. If the witness will state that he has no knowledge of the source, then I think that will make the record clear. But so far we have had your statement and not the witness' statement to that effect.

Mr. KHEEL. I thought that is what the witness said.

Mr. MARSHALL. All he has to do is simply state, "I have no knowledge of the source," and I think the record will be clear, and we can go on to something else.

Mr. LATHAM. I would like to stand on my previous answer.

Mr. MARSHALL. Then you understand the consequences of your standing on your previous answer?

Mr. LATHAM. That is correct.

Mr. MARSHALL. And you understand the chair has directed you to answer the question?

Mr. LATHAM. I do.

Mr. MARSHALL. All right. I think we may go on.

Mr. FLYNT. Mr. Mitchell.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. Latham, one of the responsibilities of our committee is to make recommendations to the House on how to prevent such an occurrence from happening again.

I want to assure you that I also have great respect for the first amendment, and I do not want to do anything to erode the first amend-

ment. And I am sympathetic with your job, the public's right to know, and all the news that is fit to print. But would you agree, Mr. Latham, that our Nation has secrets that must be kept?

Mr. LATHAM. I agree that our Nation has secrets that must be kept.

Mr. MITCHELL. Would you agree also that the Congress of the United States must have an intelligence oversight capability?

Mr. LATHAM. I am very much in favor of the Congress having that capability.

Mr. MITCHELL. And to do that, the Congress of the United States has to be able to keep secrets. I think you can follow that logic.

Mr. LATHAM. I believe the Congress has to be able to keep secrets.

Mr. MITCHELL. Were you aware—we learned this in our testimony, and I do not know that it came out before the report was published—but were you aware of the fact that the CIA classified that report as containing something like 25-percent top secret—25-percent classified information?

Mr. LATHAM. I wasn't aware of that information.

Mr. MITCHELL. You didn't feel that the report contained any top secret information?

Mr. LATHAM. Well, I felt that the committee who prepared the report had been willing to and wanted to release the report.

I also realized that the committee had done its work from sanitized documents supplied by the agency. So it first went through the sanitizing process of the documents, sanitized, and then turned over to the committee. Then the committee sanitized this information before it put it in the report. I was also aware that there were not names of any station chiefs, no names of any agents. And I felt that since it had gone through that many screenings, and the committee had voted, that we were not subjecting the United States to any immediate danger, and that in the balancing process that you go through in deciding to publish or whether not to publish—by the way, I did not make the decision whether to publish. I recommended that we publish. But I thought that a part of protecting the Nation is the Nation should stand for something, and a part of what the Nation stands for is cleaning up its own mistakes. And I felt this was in that tradition.

Mr. MITCHELL. If you had known that the CIA had classified 25 percent of this document, hypothetical situation—25 percent of this document as "Top Secret," would you have reported it anyway? Would you have participated in the publishing?

Mr. LATHAM. That is a hypothetical question. However, I know that those classifications are sometimes used to cover mistakes, and that one person's top secret is another person's normal, everyday news.

Mr. MITCHELL. You were aware also, Mr. Latham, that the President of the United States had requested that the report not be published until such time as it could be sanitized properly?

Mr. LATHAM. I was aware of that. But as I stated in the introduction—I actually quoted from the committee's own report, that once documents are subject to being sanitized by the executive branch, they often come out with the whole pages blank, and pages with only one sentence on them. And I didn't feel that the President had the exclusive right to decide—

Mr. MITCHELL. I didn't get the last sentence.

Mr. LATHAM. I didn't feel that the President had the exclusive right to decide whether this report should be published.

Mr. MITCHELL. It wasn't exclusive. The House of Representatives also voted two to one not to have it published.

Mr. LATHAM. But the committee itself that the prepared the report voted to publish it.

Mr. MITCHELL. I have no further questions, Mr. Chairman.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. I have no questions.

Mr. FLYNT. Committee counsel?

Mr. MARSHALL. Mr. Latham, I have one more question.

Who or what is the basis for your information that sanitized documents were supplied to the select committee in connection with their preparation of the report?

Mr. LATHAM. The report itself. It gives a long explanation of the frustrations of dealing with sanitized documents supplied by the Central Intelligence Agency.

Mr. MARSHALL. So that your opinion that the report dealt with or came from documents which were sanitized was exclusively an opinion based upon what you read in the report; is that right?

Mr. LATHAM. That is correct.

Mr. FLYNT. Mr. Spence.

Mr. SPENCE. Mr. Latham, I have been interested in your responses. Are you an authority on intelligence matters?

Mr. LATHAM. Having covered the intelligence committee for New York magazine I would not say I am a supporter.

Mr. SPENCE. Do you think you in all honesty have some qualifications to decide for yourself and everyone who might read your publication whether or not something your are printing would be harmful to the national security of this country?

Mr. LATHAM. I believe that the first amendment gives me the authority to make that decision. I didn't make the decision, I only recommended. It was up to other people to finally make the decision.

Mr. SPENCE. What about someone else, say, who is not in your position, but an individual, nonetheless, would he have an equal right to determine for himself and the public before the whole world something that could be harmful to national security?

Mr. LATHAM. I believe that the first amendment gives the press the right to make the decision what to publish.

Mr. SPENCE. You said earlier that you thought this country had to have some secrets.

Mr. LATHAM. I believe it does.

Mr. SPENCE. It's necessary to have secrets.

Mr. LATHAM. I believe it does.

Mr. SPENCE. Now you are saying any one person can determine for himself what is secret or should be held secret and what should not?

Mr. LATHAM. I am saying that the——

Mr. SPENCE. That is not consistent.

Mr. LATHAM. I am saying under the first amendment the press is allowed to make the decision whether to publish or not to publish.

Mr. KHEEL. Mr. Chairman, for the record, on behalf of the New York magazine, the New York Co., the Village Voice and all of the

people I represent today, I don't want to sound sanctimonious about this, but we consider ourselves to be loyal Americans and we are concerned about the security of the United States.

We are also journalists and publishers and editors with the responsibility to provide the public with information it is entitled to know, and that decisions were made in pursuance of that responsibility.

Mr. SPENCE. Mr. Chairman, I think the witness should answer the question and not his counsel.

Mr. KHEEL. If I may—I am practically finished—and I would like this in the record. It is our position that these decisions were made on balance, taking all of the factors into account which we believe should be taken into account in the discharge of our first amendment rights and obligations.

Thank you.

Mr. FLYNT. Any other questions?

Mr. SPENCE. No, sir.

Mr. FLYNT. Mr. Latham, you may step down.

Committee counsel will call the next witness.

Mr. MARSHALL. Mr. Sheldon Zalaznick.

Mr. FLYNT. Mr. Zalaznick, would you remain standing and raise your right hand while I administer the oath?

Do you solemnly swear that the testimony you will give before this committee in the matters now under consideration will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ZALAZNICK. I do.

Mr. FLYNT. You may be seated.

TESTIMONY OF SHELDON ZALAZNICK, FORMER EMPLOYEE, NEW YORK MAGAZINE, ACCOMPANIED BY THEODORE W. KHEEL, COUNSEL

Mr. MARSHALL. Mr. Zalaznick, would you state your name and address for the record?

Mr. ZALAZNICK. Sheldon Zalaznick, 458 West 2463, Bronx, N.Y.

Mr. MARSHALL. You are appearing here with counsel?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. For the record, counsel, will you introduce yourself?

Mr. KHEEL. Theodore W. Kheel.

Mr. MARSHALL. Mr. Zalaznick, you are here pursuant to a subpoena duces tecum which was served on you prior to this hearing; is that correct?

Mr. ZALAZNICK. That is correct.

Mr. MARSHALL. At the time the subpoena was served upon you you were also served with copies of House Resolutions 1042 and 1054, the Rules of House of Representatives and the rules of this committee, a copy of the investigative procedure which has been adopted by this committee, and a copy of the chairman's opening statement. Is that correct, sir?

Mr. ZALAZNICK. Correct.

Mr. MARSHALL. In the event your testimony or evidence may involve material from an executive session, Select Committee on Intelligence, or information which is classified or information which may tend to

defame, degrade, or incriminate any person, would you please advise this committee so that it may take appropriate action under the Rules of the House of Representatives?

Mr. ZALAZNICK. I will, sir.

Mr. MARSHALL. Now, the subpoena duces tecum served upon you prior to the appearance demanded that you produce certain papers at this hearing, including any and all copies of, or drafts of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591.

Do you have those papers with you?

Mr. ZALAZNICK. I have no such papers, sir.

Mr. MARSHALL. All right, you had no such papers in your custody, possession, or control at the time of the service of the subpoena?

Mr. ZALAZNICK. That is correct.

Mr. MARSHALL. Do you have a statement which you wish to make to this committee, sir?

Mr. ZALAZNICK. I believe my beliefs are covered by the statement made by Mr. Felker and the statement made by Mr. Latham.

I would only add that personally I have no objection in principle to the purposes of this committee. I am profoundly concerned with the committee compelling journalists to assist them in these purposes.

Mr. MARSHALL. Mr. Zalaznick, where are you presently employed?

Mr. ZALAZNICK. I have just left New York magazine. As it happens, I am now the managing editor of Forbes magazine.

Mr. MARSHALL. At the time you were with New York magazine, what were your duties?

Mr. ZALAZNICK. I was the senior editorial director of New York magazine.

Mr. MARSHALL. Did your duties require you to perform any duties as well for the Village Voice?

Mr. ZALAZNICK. Not in the ordinary course of business.

Mr. MARSHALL. Were you employed by the Village Voice when the editions of February 16 and February 23 were published by the Village Voice?

Mr. ZALAZNICK. No, sir.

Mr. MARSHALL. Did you have anything to do in connection with the publication of the text of the report in those editions?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. What were your responsibilities in that regard, if you can tell us generally?

Mr. ZALAZNICK. Quite simply, once the decision had been made to publish the Pike report, I was the editor in charge of the process of getting it into print.

Mr. MARSHALL. Now, in connection with the discharge of those responsibilities, did you obtain two copies of the report which Mr. Schorr supplied to the Village Voice from Mr. Latham?

Mr. ZALAZNICK. Did you say two copies, sir?

Mr. MARSHALL. Yes, sir.

Mr. ZALAZNICK. Well, we received a copy of the report, and my best recollection is I know that Aaron Latham made additional copies, and my best recollection is we made three additional copies, making a total of four.

Mr. MARSHALL. How many copies did you receive?

Mr. ZALAZNICK. I kept two.

Mr. MARSHALL. All right, sir. Now, where are those copies now?

Mr. ZALAZNICK. They were thrown out.

Mr. MARSHALL. When you say they were thrown out, did you throw them out?

Mr. ZALAZNICK. I threw my two copies out.

Mr. MARSHALL. Did you put them in the garbage or burn them or what did you do with your copies?

Mr. ZALAZNICK. Well, as it happened, I burned them in my back yard.

Mr. MARSHALL. And in your charcoal grill?

Mr. ZALAZNICK. Yes.

Mr. MARSHALL. You weren't cooking anything else at the time, were you?

Mr. ZALAZNICK. It was cold, nothing else was going on.

Mr. MARSHALL. After the two copies were delivered to you, what did you do with them?

Mr. ZALAZNICK. I and a small group of New York Magazine personnel went to a typesetting house which New York Magazine ordinarily uses in its normal business.

Mr. MARSHALL. Sterling Graphic Arts.

Mr. ZALAZNICK. Correct.

Mr. MARSHALL. All right, sir, and what did you do there?

Mr. ZALAZNICK. We did normal editorial things of preparing the material for publication. We got it going.

Mr. MARSHALL. All right. Now, did you take the two copies back from Sterling Graphic Arts after you had completed your work there?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. And then did you return them to your office or did you take them directly home at that point?

Mr. ZALAZNICK. As it happens, once the movement, the project was, as we say, closed, I took everything and I stopped in at the office and then went promptly home with it.

Mr. MARSHALL. Did you have any communications with Mr. Schorr in connection with carrying out your responsibilities on behalf of the Village Voice?

Mr. ZALAZNICK. No, sir.

Mr. MARSHALL. With regard to the copies that were supplied to you, did any pages appear to be missing?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. Was the description of those pages appearing to be missing accurate insofar as it appeared in the Village Voice?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. Were any pages illegible?

Mr. ZALAZNICK. A few of the pages, and I couldn't be certain, but it was in the magnitude of 2 or 3 rather than 20 or 30, a very few of the pages were in that runny, ripply, the way you sometimes get when a Xerox is catching, a reproducing machine is catching.

There were a few pages that were difficult to read, not impossible.

Mr. MARSHALL. Were there any marks on the copy of the report that you received at the time you received it?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. Could you describe what those marks were?

Mr. ZALAZNICK. A few underlines, and a kind of random mark or two in a margin.

Mr. MARSHALL. Do you recall what those random marks or two in the margin were?

Mr. ZALAZNICK. No, sir.

Mr. MARSHALL. Were they words or—

Mr. ZALAZNICK. No, sir.

Mr. MARSHALL. Symbols?

Mr. ZALAZNICK. To the best of my recollection, it was just a kind of vertical mark in a margin.

Mr. MARSHALL. As though a particular part of the report was being referenced for later attention?

Mr. ZALAZNICK. I can't say, sir.

Mr. MARSHALL. Did the report have footnotes at the time you received the copy?

Mr. ZALAZNICK. Yes, sir.

Mr. MARSHALL. Now, were any changes made in the text prior to publication?

Mr. ZALAZNICK. Changes in the text?

Mr. MARSHALL. Yes, sir.

Mr. ZALAZNICK. None that I can recall.

Mr. MARSHALL. All right. So it's your testimony that whatever was given to the Village Voice by Mr. Schorr, subject to the earlier testimony about footnotes, and so forth, was what the Village Voice published; is that right?

Mr. ZALAZNICK. That is correct.

Mr. MARSHALL. Now, do you have any knowledge whatsoever how or from whom Mr. Schorr got the report he made available to the Village Voice for publication?

Mr. ZALAZNICK. No, sir.

Mr. MARSHALL. Did you or anyone else, to your knowledge, ask Mr. Schorr how he obtained that information?

Mr. ZALAZNICK. I did not.

Mr. MARSHALL. To your knowledge did anyone else?

Mr. ZALAZNICK. No, sir.

Mr. MARSHALL. All right. Do you know of anyone else other than Mr. Schorr who may have knowledge about how or from whom Mr. Schorr obtained the report?

Mr. ZALAZNICK. No, sir, I do not.

Mr. MARSHALL. Did you take part in any discussions about the Village Voice making a money payment to anyone in return for the report being made available to the Village Voice for publication?

Mr. ZALAZNICK. I dealt with nobody.

Mr. MARSHALL. So, you have no knowledge on the subject of any financial payment made by the Village Voice to the Reporters Committee for Freedom of the Press?

Mr. ZALAZNICK. That is correct.

Mr. MARSHALL. That is all of the questions I have, Mr. Chairman.

Mr. FLYNT. Mr. Zalaznick, is it your testimony that as the editor in charge of preparing this material for publication that you made

no additions, no deletions, and no alterations of any kind to the text which you received, other than footnotes?

Mr. ZALAZNICK. No, sir. That would not be correct. There was, for example, in the discussion of the Secretary of State's conduct of American foreign policy with respect to the Kurds, the report, as I recall, did not specify that the country that figured at some point in the negotiations and the strategy was Iran.

It was common knowledge that the country was, in fact, Iran, and so, for example, as part of the normal editing process, where the report had referred to a foreign government, we put the word "Iran" in, in a correct, grammatical context, but I hope we were conscientious about signaling that editing change in the conventional way with brackets, which is a conventional signal to a reader that an editor has intervened.

Mr. FLYNT. The reason I ask the question, and I want you to understand the reason, I understood you to tell counsel in response to a similar question that there were no changes made.

Mr. ZALAZNICK. Well, I am sorry for having appeared to mislead the committee.

Mr. FLYNT. Mr. Price?

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. No questions.

Mr. FLYNT. Mr. Teague?

Mr. TEAGUE. Mr. Zalaznick, when we say the press, what are we talking about, who is the press?

Mr. ZALAZNICK. I suppose those people who hold themselves out to be the press.

Mr. TEAGUE. Anybody who writes, for example, Members of Congress; most of them write newsletters. Are we members of the press?

Mr. ZALAZNICK. Apart from certain advantages and the franking privilege, sir, I don't know what would distinguish you from the press.

Mr. TEAGUE. Well, does the news media try in any way to define?

Mr. ZALAZNICK. I am sorry, sir, I didn't hear.

Mr. TEAGUE. Does the news media have any standards or do they have a definition that covers the press?

Mr. ZALAZNICK. Sir, I think it's the American public that finally decides who is and who is not the press to the extent that they accept or reject this or that publication.

Mr. TEAGUE. I have a young lady who writes newsletters for me. Is she a member of the press?

Mr. ZALAZNICK. I would think she would be more properly characterized as a member of the public relations establishment.

Mr. TEAGUE. Are you saying PR firms are not press?

Mr. ZALAZNICK. Not in my judgment, no. They are parapress or ancillary to, but not the press itself.

Mr. TEAGUE. That is all, Mr. Chairman.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLEN. Thank you, Mr. Chairman.

When you took these two copies of the report to your backyard, were they hot enough to grill your steaks?

Mr. ZALAZNICK. It was February, I believe, Mr. Congressman, and there was nothing going on besides burning the papers.

Mr. QUILLEN. Did you burn every sheet?

Mr. ZALAZNICK. Yes, sir.

Mr. QUILLEN. Were you satisfied with that operation?

Mr. ZALAZNICK. I don't mean to be uncooperative, Mr. Congressman, I don't know what the point of that is.

Mr. QUILLEN. The point is that in burning and destroying the report you were convinced in your own mind that it contained secret and classified information.

Mr. ZALAZNICK. That is not the case at all, sir.

Mr. QUILLEN. Others testified that they threw them in the trash barrel. Then why did you take them home and burn them?

Mr. ZALAZNICK. It seems crazy at the time, sir, but it did occur to us that just such an inquiry as we are now present at might get going, and it seems prudent to do what we possibly could to avoid even inadvertently compromising the integrity of anybody's sources.

Burning seems to me better than a wastebasket.

Mr. QUILLEN. You took it on yourself as one of the editors to tighten the restrictions, even over and above that performed by your publisher and editor?

Mr. ZALAZNICK. Yes.

Mr. QUILLEN. Were you saying that he did wrong when he did what he did?

Mr. ZALAZNICK. No, sir.

Mr. QUILLEN. You just got through saying that you did the right thing.

Mr. ZALAZNICK. There were several courses, several roads one might take with it for the same objective, sir. One is as good as another, as it turned out.

Mr. QUILLEN. I think a moment ago you made a little mockery out of freedom of the press. I hope you were not really serious in your remarks.

Mr. ZALAZNICK. I was not, sir.

Mr. QUILLEN. We all believe in freedom of the press. I was a publisher for a newspaper at age 19, started another one at age 22 and I likewise believe in the freedom of the press, but somehow I don't think one should hide behind the first amendment as they do sometimes behind a smokescreen.

I think it's a very serious situation. We have publications in this country that would take it upon themselves to publish secret and classified material believing that they have more knowledge than 435 Members of Congress, or the will of the people of this Nation, and I think it's a very serious matter and something we should not make light of.

That is all, Mr. Chairman.

Mr. FLYNT. Mr. Hébert?

Mr. HÉBERT. Thank you, Mr. Chairman.

I had not intended to ask any questions, but the development of the colloquy compels me to make these remarks or these observations at this time.

I think my position is well known on this particular subject matter. I will not ask any newspaperman under any circumstances, under any condition to reveal his source, period.

I will not do it.

Now, starting from there, however, I do intend to question the activity of an individual who does gain information, and how he handles it.

Now, the previous witness, Mr. Latham I think his name was, had an opportunity to say something in a flat statement. He elected to subject himself to contempt proceedings. Why he did that I don't know.

The attorney for him was encouraging and embracing the first amendment with its obligations. Now, I am just wondering, his witness, his client, says the first amendment gives the newspaperman the right to tear up the Constitution, laws meaning nothing, and that it is a newspaperman's right under the first amendment to publish any and everything, you know, and you are the sole judge of it.

This is what concerns me.

Mr. KHEEL. Sir, I don't believe that is a correct statement of our position. We think that as journalists and as editors and as publishers we have a responsibility to weigh the information that comes to our attention and to decide whether or not in a particular instance it should be published, and that in this instance, on balance, taking into account all of the circumstances, the decision was made to publish the report.

We are ever mindful of the security problems of the United States, we are lawful Americans, and we are concerned about protecting the United States as much as anyone else is.

Mr. HÉBERT. I could buy what you said, you repeated what you said, but left off one sentence, and that is concerning the first amendment with its obligations.

Mr. KHEEL. Right.

Mr. HÉBERT. Now, in effect, your client didn't say that; your client says the first amendment gives him the right to do what he damn pleases. Now that is what he said. I didn't say it.

Now, look at that Supreme Court over there, which I don't agree with very much. But they have a big sign saying in effect that this is a Government of laws, not a Government of men.

Mr. KHEEL. That is——

Mr. HÉBERT. Wait now——

Mr. KHEEL. Excuse me.

Mr. HÉBERT. If anybody is so naive and so foolish to think we live under a government of laws today, they better have their heads examined. If you don't like the law, violate it. That is what we are confronted with. In the canons of the American press, they set up their rights and I agree with their rights, but the greater those rights, the greater responsibility to be very, very careful of how they protect those rights, and that is what concerns me, and that is all I want to say now.

Mr. KHEEL. We are equally concerned now.

I personally recognize limitations on first amendment rights. At present the Supreme Court is divided on these, on the extent to which the rights, what rights, go; and for the purposes of this proceeding it is our position that whatever may be the ultimate extent of the rights of journalists under the first amendment, that we made a deci-

sion on balance that was the right decision in the interest of the first amendment and the people of this country.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. Mr. Chairman, I had no intention to ask any questions, or particularly to make any statement.

I want to make a very brief statement in view of some of the other comments by committee members.

I do not believe that today's proceedings will assist the committee in developing any useful information with respect to its responsibility under H.R. 1042 or 1054; in addition, more seriously, the subpoena of these witnesses raises delicate constitutional policy questions which I regret have been raised.

I want to reaffirm my concern that the subpoenas have been issued, and that the questions that the committee is placing today before these witnesses have been asked. I disagree with that decision, respectfully, and I regret it.

Mr. FLYNT. Mr. Quie?

Mr. QUIE. No questions.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. No questions.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. No questions, Mr. Chairman.

Mr. KHEEL. Mr. Chairman, may I say one thing further and that is that I hope the record is clear that there was no payment made, and indeed, there was no discussion of any payment for the report. There was a discussion of a possible contribution.

Mr. MARSHALL. It is not appropriate at this time for you to argue your case.

Mr. KHEEL. I am not arguing it.

Mr. MARSHALL. You may make any point you wish to make to protect the rights of your clients.

Mr. KHEEL. I want to make sure the record is clear. Sir, I believe you would want to make sure the record was clear on this subject and I am merely inquiring whether it is.

Mr. FLYNT. Counsel, the record will speak for itself.

Mr. BENNETT. Mr. Chairman?

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. I am not quite sure that I understood about whether a contribution was made. Was there any contribution?

Mr. KHEEL. There was no contribution made. Thank you.

Mr. FLYNT. You may step down.

Mr. ZALAZNICK. Thank you.

Mr. FLYNT. Committee counsel will call the next witness.

Mr. MARSHALL. Mr. Daniel Schorr to the witness stand.

Mr. FLYNT. Mr. Schorr, would you remain standing and raise your right hand and be sworn?

You do solemnly swear that the testimony you will give to this committee in the matter now under consideration will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SCHORR. I do.

Mr. FLYNT. You may be seated.

TESTIMONY OF DANIEL SCHORR, REPORTER, CBS, INC., ACCOMPANIED BY JOSEPH A. CALIFANO, JR., COUNSEL

Mr. MARSHALL. Mr. Schorr, would you state your full name and address, please?

Mr. SCHORR. My name is Daniel Schorr; my address is 313 Woodley Road, NW., Washington, D.C.

Mr. MARSHALL. You are appearing here with counsel?

Mr. SCHORR. Yes, sir.

Mr. MARSHALL. Counsel, you may identify yourself for the record.

Mr. CALIFANO. I am Joseph A. Califano, Jr. I am a Washington attorney, member of the bar in Washington, D.C.

Mr. MARSHALL. Mr. Schorr, you are here pursuant to a subpoena duces tecum which was served upon you earlier.

Mr. SCHORR. Yes, sir.

Mr. MARSHALL. At the time the subpoena was served upon you, you were also served with copies of House Resolutions 1042 and 1054, a copy of the Rules of the House of Representatives and the rules of this committee, a copy of the investigative procedures adopted by this committee and a copy of the chairman's opening statement to these hearings; is that not correct, sir?

Mr. SCHORR. That's correct.

Mr. MARSHALL. In the event that your testimony or evidence may involve material from an executive session of the Select Committee on Intelligence of the House of Representatives, information which is classified, or information which may tend to defame, degrade, or incriminate any person, would you please bring that to the attention of this committee in a timely way, so that it may take appropriate action under the Rules of the House of Representatives?

Mr. SCHORR. Understood.

Mr. MARSHALL. Do you have a statement to make for the committee?

Mr. SCHORR. I do.

Mr. MARSHALL. You may proceed to make that statement.

Mr. SCHORR. Mr. Chairman, I appear before this committee today under protest, in response to a subpoena whose issuance I deeply deplore.

I had hoped that this committee, which has already learned a great deal about congressional procedures for handling intelligence information, could have completed these hearings without crossing that constitutional Great Divide which separates the roles of the Congress and the press.

Whatever happens hereafter at this hearing, it is my belief that your subpoena, commanding the appearance of a reporter to discuss his journalistic activities, its effect can only be to establish an atmosphere of intimidation for the press.

Now, this subpoena requires me to produce all records, papers, documents, correspondence, et cetera, and this is not inclusive, "which relate in any way" to the subject of your inquiry. It's a broad statement and I have tried to interpret it, and I will divide the material in my possession into four general categories.

First, many of the records in my possession are material in the public domain, such as speeches that I have made, newspaper articles and I guess copies of Village Voice containing the report of the House Intelligence Committee.

To the extent that these public materials are not already available to the committee and are desired by the committee, I am willing to provide them.

Second, since the publication of the report in the Village Voice I have received several thousand letters and telegrams. If the committee feels a need for such correspondence, I should like first to seek the permission of the persons involved out of respect for their privacy.

Third, I have notes taken during the coverage of the House Intelligence Investigation and I have draft scripts that were written in preparation for broadcasts.

Now, because of the internal news decisionmaking and the editing process, some of those scripts vary from what I actually did broadcast, and in fact, others were not broadcast at all.

All of this work product I must respectfully decline to submit. I believe that it falls under the category of reporters' notes, protected by the first amendment. I take now the same position that Dr. Frank Stanton, who was then President of CBS, Incorporated, took in 1971.

He refused to comply with the House Commerce Committee subpoena demanding the scripts and the so-called out-takes of interviews filmed in preparation for the CBS television documentary, "The Selling of the Pentagon."

His position and mine today is that the internal process of preparing news for publication or for broadcast cannot be subjected to the compulsory process of subpoena without subverting the purposes of the first amendment.

Now fourth, the subpoena specifically demands "all drafts and copies of the report of the Select Committee on Intelligence which were in existence prior to January 29, 1976."

I cannot comply with that demand. The examination of the document could conceivably help to lead to discovery of the source, and as must now be manifest, if it has not been manifest before, I consider it a matter of professional conscience as well as a constitutional right not to assist you in discovering that source.

Now, this also means, obviously, and we may as well say it now, that I shall not respond to direct questioning about confidential sources, for in some 40 years of practicing journalism I have never yielded to a demand for a disclosure of a source that I had promised to protect, and I cannot do so now.

At the appropriate time, Mr. Chairman, Mr. Califano is ready to explain why, given the circumstances of this case, my role in the publication of the report, and my right to withhold the source, are indeed, protected by the Constitution.

But let me add that even if our legal position were not as strong as I believe it is, I could still not tell you my source, because for me this is a personal matter, and almost a visceral matter.

Mr. Chairman and members of the committee, we all build our lives around certain principles, and without those principles our careers simply lose their meaning.

For some of us, doctors, lawyers, clergymen, and yes, journalists, it is an article of faith that we must keep confidential those matters entrusted to us only because of the assurance that they would remain confidential.

Now, for a journalist, the most crucial kind of confidence is the identity of a source of information. To betray a confidential source would mean to dry up many future sources for many future reporters.

The reporter and the news organization would be the immediate losers, but I would submit to you that the ultimate losers would be the American people and their free institutions.

And if you will permit me one last personal word, without all of this constitutional argument, I would like to go beyond all of this. To betray a source would be for me to betray myself, my career, and my life, and to say that I refuse to do it isn't quite saying it right.

I cannot do it.

That concludes my statement.

Mr. MARSHALL. Mr. Schorr, with regard to the first two categories of documents which you have described in response to the subpoena duces tecum, that is the speeches, newspaper articles and public materials and letters and telegrams that you stated you have received, appropriate arrangements will be made and have been made with your counsel to handle the production of those documents; is that correct, Mr. Califano?

Mr. CALIFANO. Yes, Mr. Marshall. I would divide those two items. With respect to the first item, the speeches, the articles that are in the public domain, yes, we can make arrangements to provide those.

With respect to the correspondence, I would simply note, as Mr. Schorr noted in his opening statement, that there are rights of privacy involved, as you know, from individuals writing letters. There are thousands of letters involved that came to Mr. Schorr after publication, and if the committee wants these, those people would have to be contacted before we would be free to turn them over to the committee.

Mr. MARSHALL. Now, with regard to the third category, that is notes taken during coverage of the House Select Committee and scripts, as well as the copies of the report of the House Select Committee on Intelligence prepared pursuant to House Resolution 591, on behalf of the committee I now direct that you produce all copies and drafts of the report prepared pursuant to House Resolution 591 in your possession, custody or control.

Mr. SCHORR. I must respectfully decline to do so for the reasons stated, that I believe that they are a work product, protected by the first amendment in the first place, and second and more importantly, could conceivably assist you in ascertaining the source.

Mr. MARSHALL. So the record will also be clear. I am making an additional demand, solely related to the report of the Select Committee prepared pursuant to House Resolution 591, and am directing on behalf of the committee that you produce those copies of that report in your possession, and that you produce them at this time.

Mr. SCHORR. My answer remains the same.

Mr. CALIFANO. Mr. Marshall, may I just briefly note that there are two types of documents involved here, as you have noted.

With respect to one item, memoranda, internal reporters' notes, outtakes, if you will, may I cite to the Chair, may I ask of the Chair if

he is going to direct the witness to answer, direct separately because with respect to notes and outtakes there is a precedent in the House of Representatives.

That precedent was when Dr. Frank Stanton testified and refused to provide similar material. The House voted at that time 226 to 181 not to cite Dr. Stanton for contempt for refusing to provide that material.

Mr. FLYNT. I have carefully studied the legal memorandum, Mr. Califano, which you have filed with the committee.

I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by Resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purpose of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence, so that this committee can report back to the House its findings and recommendations thereon.

The papers described in the subpoena duces tecum, including any and all copies or drafts of the report prepared by the House Select Committee on Intelligence, pursuant to House Resolution 591, are pertinent to the subject under inquiry in that these papers may identify or lead to the identification of the person from whom the text and any part of that report were obtained.

This report of the House Select Committee on Intelligence, pursuant to House Resolution 591, is further pertinent to the subject under inquiry, in that it may constitute evidence or lead to evidence as to the method by which the text and any part of the text of that report were obtained.

These matters are part of the circumstances surrounding the publication of the text and any part of the report of the House Select Committee on Intelligence. Production of the copy of this report is necessary to carry out the mandate of the House of Representatives.

If you continue to refuse your copy of this report, notwithstanding the fact that you have been duly served with a subpoena duces tecum, your refusal will be deemed by this committee to constitute a willful refusal to produce your copy of this report upon a matter pertinent to the subject under inquiry, and will subject you to prosecution and punishment by a fine or imprisonment or both, under title 2 of the United States Code, sections 192, 193, and 194.

Your refusal to produce your copy of this report will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are hereby advised that I overrule your refusal to produce your copy of this report described in the subpoena duces tecum, served upon you, including your refusal to produce any and all copies of the drafts of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591.

As chairman of this committee, I hereby demand and direct that you produce your copy of this report.

Mr. SCHORR. Mr. Chairman, for the reasons stated, that I cannot engage in a venture aimed at ascertaining the source, I must repeat that I respectfully decline to provide any copies of the report.

Mr. FLYNT. Counsel, you may proceed to your next question.

Mr. MARSHALL. Mr. Schorr, did you obtain a copy of the text or any part of the report prepared by the House Select Committee on Intelligence of the 94th Congress pursuant to House Resolution 591?

Mr. SCHORR. I am sorry, I didn't get the question.

Mr. MARSHALL. The question is, did you obtain a copy of the text or any part of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591?

Mr. SCHORR. Did I obtain a copy of the report?

Mr. MARSHALL. Yes.

Mr. SCHORR. I did.

Mr. MARSHALL. All right. This committee has received testimony under oath from Congressman James V. Stanton that approximately 1 week after that report was published in the Village Voice, Congressman Stanton talked with you in the Speaker's lobby of the House of Representatives.

I have supplied counsel, your counsel, with a copy of Mr. Stanton's testimony in public sessions of this hearing.

At that conversation, Congressman Stanton testified that you told him that you obtained a copy of the text of the report from the Central Intelligence Agency and that you also said, "Of course, I would deny that if anyone asked me."

Did you make those statements to Congressman Stanton?

Mr. SCHORR. Mr. Marshall, I have never discussed with anyone the source from which I obtained the report other than two privileged persons.

Mr. MARSHALL. Did you have that conversation with Congressman Stanton?

Mr. SCHORR. I have never discussed with anyone anything relating to the source of that report other than two privileged persons.

Mr. MARSHALL. Do you mean by that response that your answer is no, you did not have that conversation?

Mr. SCHORR. I think—

Mr. MARSHALL. With Mr. Stanton?

Mr. SCHORR. My response must speak for itself.

Mr. MARSHALL. Who were the two privileged persons that you discussed the report with?

Mr. SCHORR. My counsel, Mr. Califano, and my wife.

Mr. MARSHALL. Mr. Schorr, is it your statement to this committee that you will not answer further the question that I have asked you with regard to the conversation with Congressman Stanton approximately 1 week after the report was published in the Village Voice, that conversation having taken place in the Speaker's lobby of the House of Representatives?

Mr. SCHORR. I think my reply given before is adequate.

Mr. MARSHALL. You will not answer further as to whether that conversation did or did not take place?

Mr. SCHORR. That is correct.

Mr. MARSHALL. Did you have any conversation with Congressman Stanton with regard to where you obtained the report?

Mr. SCHORR. I decline to discuss my conversations with any persons pursuant to my news gathering activities.

Mr. CALIFANO. Mr. Chairman, may I briefly make a statement to the source point.

Mr. MARSHALL. On the legal position?

Mr. CALIFANO. Yes.

Mr. MARSHALL. In other words, you wish to present your legal position to the committee?

Mr. CALIFANO. Briefly.

Mr. FLYNT. You may proceed, Mr. Califano.

Mr. CALIFANO. Mr. Chairman, it is our position in the papers we have filed with this committee and which we have requested be made a part of the record of this committee, that Mr. Schorr has an absolute, complete right in these proceedings not to reveal the identity of a source, that that is protected by the first amendment.

It is our position that his actions in making available that report for publication in the newspaper are protected by the first amendment.

The first amendment protects not only the publication of information, but by necessity the gathering of news. The Supreme Court of the United States has recognized that by saying that without protection for news gathering the first amendment would be eviscerated.

The Department of Justice has recognized that principle by setting forth guidelines under which it will not proceed to subpoena reporters for their confidential sources.

In the context of this hearing, at the time the public record indicates Mr. Schorr received the report, namely, sometime subsequent to the time the House Select Committee on Intelligence voted by a bipartisan 9-to-4 majority to release the report and make it public, and prior to the time of the House resolution, the suppression resolution, no rule, regulation, or term of employment of the House of Representatives or that committee was or could have been violated by any source, whether that source is in the executive branch, the legislative branch, a Member of Congress, a staffer or an independent citizen, and no rule or regulation could have been violated by Mr. Schorr in receiving that report.

The House resolution designed to suppress publication of the report was not directed at Daniel Schorr, it was by its specific terms directed at the Select Committee on Intelligence.

That resolution said: "*Resolved*, That the Select Committee on Intelligence shall not release any report."

In those circumstances we believe that the identity of Mr. Schorr's source is not relevant to this investigation, and that the identity of Mr. Schorr's source is protected by the first amendment.

I would note that it is difficult to draw the line; it's easy to know that Mr. Schorr under those circumstances should not answer the question, "Who is your source?" At what point prior to that the line is to be drawn is difficult. And we can spend the entire morning and afternoon in a game of "Twenty Questions," asking Mr. Schorr did he speak to A, or did he speak to B, or did he speak to C, and we can spend the morning in a cat and mouse game trying to catch Mr. Schorr in some question in which he will answer this committee, where, at some point later the court would say that might have constituted waiver of his right to protect his source.

I respectfully submit to this committee that the values at stake are too precious to play "Twenty Questions" with, that the values at stake are too fundamental to our system of government to play cat and mouse with.

Mr. Schorr's position is clear, I would urge this committee to ask him directly the central question that it has asked virtually every witness that has appeared before this committee, the question to which it devoted 9 or 10 hours yesterday in hearings, and set the issue, because he holds his belief as firmly as Members of the House of Representatives hold their belief.

He respects, as I do, the beliefs of the Members of the House of Representatives, and I have a long and personal association with many Members of this House, including the chairman of this committee.

I understand how you feel; I think Mr. Schorr understands how you feel.

We ask that you recognize what is at stake here is not a game. What is at stake here for Mr. Schorr is the core of his entire belief, what is at stake here for this country is the belief of those practitioners of the first amendment as to what is at the core of enabling them to practice it, and I ask that you get directly to the question, ask Mr. Schorr the question, and let us face up to this issue beyond that.

Mr. Chairman, I would close simply by asking that also part of this record include my letter to you and the response of Counsel Marshall, my letter requesting that this committee identify what, if anything, in the committee report that the majority of the select committee thought should be made public and is now considered to be classified, or rather is now considered to be information that would harm the national security, and this committee's response indicating that it would not identify such information because to do so would in some way damage the national security.

Thank you, Mr. Chairman.

Mr. FLYNT. Thank you. Without objection, the letter from Mr. Califano and the response of this committee will be made a part of the record.

[The letters follow:]

WILLIAMS, CONNOLLY & CALIFANO,
Washington, D.C., September 8, 1976.

HON. JOHN J. FLYNT, Jr.,
Chairman, Committee on Standards of Official Conduct, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: For seven months your Committee has been investigating the publication of the final report of the House Select Committee on Intelligence and the activities of correspondent Daniel Schorr in connection with that publication.

On August 26, 1976, your Committee issued a sweeping subpoena to Mr. Schorr, commanding him to appear on September 15, 1976 and "to bring with him all books, records, correspondence, memoranda, papers, documents, writings or other tangible things which relate in any way to the subject matter of our inquiry including all drafts and copies of the reports of the Select Committee on Intelligence which were in existence prior to January 29, 1976, and which are in his custody, control or possession."

By a bipartisan, 9-4 majority, the House Select Committee on Intelligence determined that its final report contained absolutely no material that would endanger our national security and approved that report for publication. Despite

that finding and that action, the House passed a resolution in effect ordering that the report be kept secret. By the time of passage of the House resolution, there had been numerous newspaper stories and television reports based on access to the report by journalists, including Mr. Schorr.

When Mr. Schorr took steps that led to publication of the final report, the House passed a second resolution authorizing your Committee's investigation. That investigation has focused on Mr. Schorr and attempted to determine his confidential source. As you know, Mr. Schorr considers the identity of his source privileged under the First Amendment to the U.S. Constitution and, as a matter of conscience, he considers himself ethically and professionally obliged to protect his confidential source.

A central issue in your Committee's investigation of the publication of the Select Committee's report and Daniel Schorr is the power of the House, *ex post facto*, to order its Committee reports kept secret. One of the asserted reasons for the House's action was that, as approved for publication, the final report contained information which, if released to the public, might impair the national security.

At stake in these hearings for our nation is the precious Constitutional right of the press to gather and publish information and the sacred right of the American people to be informed of its government's activities. At stake in these hearings for Daniel Schorr is the possibility that the House will hold him in contempt and that he could be imprisoned for his activities as a professional journalist executing his First Amendment rights and fulfilling his First Amendment responsibilities.

Accordingly, it is respectfully requested that, before Mr. Schorr's appearance, your Committee identify precisely those portions of the final report, if any, that it believes would harm or have harmed the national security of this country. It is also respectfully requested that your Committee provide copies of all memoranda from the CIA or any other executive agency or department, or Committee Member or staffer, that identify those portions of the final report, if any, release of which would harm or have harmed the national security. Finally, since this report has been public for seven months, it is requested that you provide any concrete evidence that your Committee has gathered which demonstrates harm to our national security as a result of its publication.

In view of the implications of this sweeping subpoena and investigation to our national and constitutional values and to Mr. Schorr personally, we submit that these are indeed modest requests which your Committee should honor in the interest of basic fairness and elemental due process.

Sincerely,

JOSEPH A. CALIFANO, Jr.,
Attorney for Daniel Schorr.

SEPTEMBER 8, 1976.

Mr. JOSEPH A. CALIFANO, Jr.,
Attorney at Law, 1000 Hill Building, Washington, D.C.

DEAR MR. CALIFANO: This will acknowledge receipt of your letter dated September 8, 1976 addressed to The Honorable John J. Flynt, Jr., Chairman of the House Committee on Standards of Official Conduct. Your letter has been referred to me for reply.

Your letter makes a number of assertions concerning the subject of House Resolutions 1042 and 1054 of the 94th Congress and the actions of this Committee pursuant to those Resolutions. While the Committee does not agree with many of those assertions, correspondence is certainly not the appropriate forum to test the merit of the various contentions and arguments your letter sets forth on behalf of your client, Mr. Daniel Schorr.

I do, however, wish to reply to the requests in your letter.

Your letter requests that the Committee identify those portions of the final Report of the House Select Committee on Intelligence that "it believes would harm the national security of this country" and that the Committee provide copies of all memoranda from the CIA or others identifying those portions of the final Report. I regret that your request must be denied. Identification of those portions of the Report to Mr. Schorr or to any other unauthorized person would simply compound any damage that has already been done or may be done to the national security.

Your letter further requests that the Committee provide concrete evidence presented to the Committee demonstrating harm to the national security resulting from publication of the Select Committee's final Report. As I am sure you know, transcripts of evidence presented to the Committee in public hearings are available to you. I shall make appropriate arrangements for you to examine these transcripts at any reasonable time. Under the Rules of the House and this Committee, evidence presented to the Committee in executive session cannot be disclosed.

The Committee wishes to treat all persons fairly and to extend to each witness the full opportunity to assert and protect every legal right. While the Committee regrets that it cannot comply with the request in your letter of September 8, 1976, please do not hesitate to contact the Committee prior to the Hearings on September 15, 1976, if you have further arguments to advance or requests to make on behalf of your client, Mr. Schorr. The Committee will, of course, give Mr. Schorr full opportunity at those Hearings to assert and protect his legal rights.

Sincerely,

JOHN T. MARSHALL,
Chief Counsel,
House Committee on Standards of Official Conduct.

Mr. MARSHALL. Mr. Califano, to respond directly to your comments, this committee does not feel that it is engaged in a cat and mouse game with Mr. Schorr, nor does this committee intend to ask Mr. Schorr 20 questions.

As you yourself have acknowledged, the first amendment rights which may be in question here may be rights which are in uncharted waters and at times the line may be difficult to draw.

Nevertheless, the line may be drawn, and it is appropriate that we make a record here which will allow whoever must draw that line to draw it as carefully as it can be drawn, so that not only the rights of the public to know, and the duty, if there is one, of the press to publish may be protected, but also so that the responsibilities and duties of this committee and the House of Representatives, the Congress and this entire Government can be carried out.

Now, I am going to question Mr. Schorr in some detail concerning the source. No one desires to trip him up. With able counsel such as yourself I am confident that will not happen. But this committee does intend to pursue such questions as will lead it to carry out the mandate put upon it by the House of Representatives.

Now, this committee has received testimony from Congressman James V. Stanton, a copy of which I supplied to you before this hearing so you would have a full record from which to take whatever position you wished to take.

That testimony from Congressman Stanton was that Mr. Schorr, approximately 1 week after the report had been published in the Village Voice, talked with Mr. Stanton, and that at that time Mr. Stanton said that Mr. Schorr reported to him that Mr. Schorr obtained a copy of the report from the Central Intelligence Agency.

At that time, Mr. Schorr also said, according to Mr. Stanton's testimony, that Mr. Schorr would, "of course, deny that if anyone asked me."

Now, in an effort for this committee to carry out its responsibilities, I am going to ask the Chair to tell the witness that I insist on an answer to my question concerning that conversation, as to whether it ever took place. And will you answer, Mr. Schorr, or do you refuse to answer that question further?

Mr. SCHORR. I refuse to answer any questions further in those terms.

Mr. FLYNT. Mr. Califano, I have listened carefully to your oral statement and your oral argument. I have also carefully studied the written legal memorandum which you filed with this committee.

I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by House Resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of the report were obtained and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry and will subject you to prosecution and punishment by fine or imprisonment or both under title 2 of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Mr. Chairman, I am not sure that the answer I have given is really unresponsive. I have said to you that I recall no conversation with any person other than the two mentioned in which I discussed my source.

Mr. FLYNT. The question was, did you have such a conversation with Representative James V. Stanton? That question is very clear.

Your answer does not appear to be responsive to the question. You are therefore, again, directed to answer the question.

Mr. SCHORR. I find it sufficiently responsive, and I find that I cannot answer it in precisely the terms that you put it, because I have no intention of starting down a list of people to whom I may or may not have spoken, and that would be the head of the list, I assume.

Mr. FLYNT. And you refuse to answer the question?

Mr. SCHORR. In the terms in which it is now stated, I refuse, although I consider my answer sufficiently responsive.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Mr. Schorr, from whom did you obtain the copy of the report of the Select Committee on Intelligence, that report being prepared pursuant to House Resolution 591?

Mr. SCHORR. Counsel, I respectfully decline to answer that question on the grounds that I feel that my right to withhold the source is protected by the first amendment and absolutely essential to the functioning of a free press in this country.

Mr. FLYNT. I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of the report were obtained and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry and will subject you to prosecution and punishment by fine or imprisonment or both under title 2 of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are hereby advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Mr. Chairman, as a matter of deep professional conscience, and fully convinced that I am protected by the first amendment to the constitution, I decline to answer that question.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Mr. Schorr, did you obtain a copy of the report prepared by the House Select Committee on Intelligence from a Member, officer, agent, employee, or a staff member of the House of Representatives?

Mr. SCHORR. For the reasons stated, and I won't bore you by repeating them, I decline to answer that question.

Mr. MARSHALL. You understand, so you may fully be aware of the consequences of your refusal to answer, that the chairman must, upon your refusal, state to you those conditions.

Mr. Chairman, I insist on an answer to the question and I would ask you that you read.

Mr. CALIFANO. Counsel, I would also like to state for the record that our memorandum, I assume, is a part of the record, our memorandum

of law, and what the arguments in that memorandum apply to all of these questions as part of the reason why Mr. Schorr is not responding, so we don't have to repeat that every time.

[The memorandum referred to appears at the end of Mr. Schorr's testimony.]

Mr. MARSHALL. We understand your urging those reasons on behalf of Mr. Schorr.

Mr. FLYNT. Mr. Califano, I will state again, I listened carefully to your oral argument, and I have carefully studied the legal memorandum which you filed with this committee.

I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by House Resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of the report were obtained and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry and will subject you to prosecution and punishment by fine or imprisonment or both under title 2 of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Mr. Chairman, as a matter of professional conscience, I am convinced that the first amendment of the constitution was written precisely to guarantee that I would not have to provide that source and to protect the free press. I respectfully decline to answer.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Mr. Schorr, did you obtain a copy of the report of the House Select Committee on Intelligence prepared pursuant to House Resolution 591 from a member or a staff employee of the House Select Committee on Intelligence?

Mr. SCHORR. As a matter of conscience, and in invoking my first amendment protection, I respectfully decline to reply to that question.

Mr. FLYNT. I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by House Resolution 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of the report were obtained and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry and will subject you to prosecution and punishment by fine or imprisonment or both under title 2 of the United States Code, sections, 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Mr. Chairman, for the constitutional and reasons of personal conscience heretofore stated, I must continue to decline to reply to that question.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Mr. Schorr, did you obtain the copy of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591 from any person or agency employed in the executive branch of the United States Government?

Mr. SCHORR. Mr. Counsel, as a matter of personal conscience and relying on my first amendment protection, I also decline to reply to that question.

Mr. FLYNT. I must advise the witness that this committee is acting pursuant to the authority vested in it by House Resolutions 1042 and 1054 of the House of Representatives, 94th Congress. Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence, so that this committee can report back to the House its findings and recommendations therein.

The question put to you is pertinent to the subject under inquiry, in that the identity of the person from whom the text and any part of that report were obtained and the method by which the text or any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report. Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives. If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry, and will subject you to prosecution and punishment by a fine or imprisonment or both, under title II of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives. Accordingly, you are advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Mr. Chairman, for the personal reasons and on the constitutional grounds stated, I must continue to decline to reply to that question.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Mr. Schorr, on what date did you obtain the copy of the report prepared by the House Select Committee on Intelligence pursuant to House Resolution 591?

Mr. SCHORR. For constitutional reasons, or on constitutional ground, and for personal reasons, because it is not my intention to provide you with any information which could possibly help you to ascertain the source, I respectfully decline to reply to that question.

Mr. FLYNT. I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by House Resolutions 1042 and 1054 of the House of Representatives, 94th Congress. Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon. The question put to you is pertinent to the subject under inquiry in that the identity of the persons from whom the text and any part of that report were obtained and the methods by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry, and will

subject you to prosecution and punishment by a fine or imprisonment or both, under title II of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Sir, on the grounds and for the reasons stated, I must continue to decline.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Mr. Schorr, did you show the copy of the report which you obtained on public television over CBS News on January 28, 1976?

Mr. SCHORR. That is readily apparent to the entire country.

Mr. MARSHALL. I take it your answer is yes?

Mr. SCHORR. Yes.

Mr. MARSHALL. Did you exhibit it on public television on any other dates other than January 28, 1976?

Mr. SCHORR. I believe I did.

Mr. MARSHALL. Could you tell us what those dates were, sir?

Mr. SCHORR. I am relying on memory. The first date was January 25. I think again on the morning of January 26. And perhaps one or two times between the 26th and the 28th.

Mr. MARSHALL. Did you exhibit a copy of the report on public television, either on CBS or any other network, at any time after January 28, 1976?

Mr. SCHORR. I frankly don't remember.

Mr. MARSHALL. When you obtained a copy of the report, that you testified to, did you make additional copies from the copy you got?

Mr. SCHORR. I did.

Mr. MARSHALL. Where are those copies now?

Mr. SCHORR. In my possession.

Mr. MARSHALL. How many copies did you make of the original copy you received?

Mr. SCHORR. How many did I make?

Mr. MARSHALL. Yes.

Mr. SCHORR. How many are in my possession?

Mr. MARSHALL. Yes.

Mr. SCHORR. There are four.

Mr. MARSHALL. Those are two separate questions. How many copies did you make, and of those copies, how many are in your possession?

Mr. SCHORR. Answering the second question first, there are four copies in my possession. With respect to the first question, as to how many copies I made, I must respectfully decline to answer because I cannot answer that question without entering into the internal editorial process of preparing news for dissemination which I believe is protected by the first amendment. That is to say, that I could not answer that question by telling you something about the internal news workings which I believe are protected by the first amendment.

Mr. FLYNT. With regard to the question which you just refused to answer, I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by House Resolutions 1042 and 1054 of the House of Representatives, United States Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today. The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and any part of the report of the House Select Committee on Intelligence, so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of that report were obtained, and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives. If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry, and will subject you to prosecution and punishment by a fine or imprisonment or both under title II of the United States Code, sections 192, 193, and 194.

Your refusal to answer that part of the question which you have refused to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are advised that your objection to that part of the question which you refuse to answer, and your grounds for refusing to answer that part of the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer that part of the question put to you which you have not previously answered.

Mr. SCHORR. Mr. Chairman, I continue to decline. And just so that it is fully understood why I decline, let me say that it is my firm belief that there is a process which goes on in news organizations in which people must be able to speak freely to each other, make arrangements and decisions and hold consultations. And that entire process is protected by the first amendment. Because if it were known that it would be possible in retrospect for a congressional committee or any governmental body to look back over the shoulders of those who were engaged in preparing news for dissemination, the effect would be chilling. And, therefore, I cannot go into the internal process by which news is prepared.

Mr. FLYNT. Do you continue to refuse to answer that part of the question which you have heretofore refused to answer?

Mr. SCHORR. I do, Mr. Chairman, just as Dr. Stanton declined to provide outtakes.

Mr. FLYNT. Counsel will proceed.

Mr. MARSHALL. Did you deliver one of the copies that you made to a newspaper, the Village Voice, for publication in its February 16 and February 23, 1976, editions of that newspaper?

Mr. SCHORR. The strict answer to that would be no, I did not deliver it. But if I understand the purpose of your question, I arranged to have it delivered; yes.

Mr. MARSHALL. Was that copy of the report picked up from your home here in Washington and delivered to the Village Voice?

Mr. SCHORR. You have had testimony to that effect, and that testimony is correct.

Mr. FLYNT. I couldn't hear you.

Mr. SCHORR. You have had testimony to that effect, and that testimony is accurate.

Mr. MARSHALL. Is accurate? All right.

And that pickup of your copy of the report was made on February 6, 1976; is that correct?

Mr. SCHORR. If that was a Friday, the answer is "Yes."

Mr. MARSHALL. Now, at the time you made arrangements for the Village Voice to obtain the copy of the report, had you discussed with the Village Voice whether it, in fact, was going to publish the report?

Mr. SCHORR. I did not.

Mr. MARSHALL. Did you ever have any discussions with the Village Voice about publication of the report?

Mr. SCHORR. I did not.

Mr. MARSHALL. Is it your testimony you were simply making the report available to the Village Voice for the Village Voice to do with it what it would?

Mr. SCHORR. Well, I didn't in fact even make the copy available as far as I knew to the Village Voice.

Mr. MARSHALL. To whom did you think you were making the copy available at the time the person arrived to pick it up from your home in Washington, D.C.?

Mr. SCHORR. I thought I was making it available to Mr. Felker for publication in one of three ways: either in the Village Voice, or in New York magazine, or in some third way, as a separate tract or pamphlet.

Mr. MARSHALL. Well, is my understanding correct, then, that there was no question about whether Mr. Felker would publish the report? The only question in your mind at that time was what the vehicle for publication would be.

Mr. SCHORR. And the time, yes.

Mr. MARSHALL. All right.

Was that to be Felker's choice, or were you to participate in that decision?

Mr. SCHORR. I'm sorry.

Mr. MARSHALL. Was the decision as to the vehicle for publication to be Mr. Felker's sole choice, or were you to participate in that decision?

Mr. SCHORR. I had no part in that process.

Mr. MARSHALL. Now, at the time you made the report available to Mr. Felker, in the manner in which you have testified to, did you know that the House of Representatives had voted by resolution on January 29, 1976, not to release the report to the public until certain conditions were met?

Mr. SCHORR. I knew that the House had voted to direct the select committee not to release the report.

Mr. MARSHALL. And were you also aware that the House did not receive the select committee's copy of the report until January 30, 1976?

Mr. SCHORR. I accept that. I didn't know that.

Mr. MARSHALL. Was the text of the report printed in the February 16 and February 23, 1976, editions of the Village Voice the same as it appeared to you as the text of the copy of the report you made available to Mr. Felker?

Mr. SCHORR. To avoid possible error, let me say that I have never made a line-by-line examination. But it appears to me that in substance it was the same.

Mr. MARSHALL. Was the copy that you made available to Mr. Felker and subsequently published in the Village Voice later returned to you?

Mr. SCHORR. It was.

Mr. MARSHALL. And is that one of the copies you have in your possession now that you refuse to produce under subpoena duces tecum?

Mr. SCHORR. It is.

Mr. MARSHALL. Now, Mr. Schorr, did you contact any person, firm, or corporation other than Mr. Felker about the copy of the report that you were going to make available for publication?

Mr. SCHORR. Yes. Let me say in a general way that my original intention and hope was that the report be published in the form of a book, a paperback or other book, a paperback because it could be done fastest. But I considered that to be the most neutral way of bringing the contents of the report available, making them available to the public. And in the course of doing that I contacted several persons who I thought might be able to make arrangements, or make inquiries of book publishers to find out whether it could be published as a book.

Mr. MARSHALL. And who were those persons that you contacted?

Mr. CALIFANO. Let me make one thing clear, Mr. Counsel, so that this committee understands at least the theory under which Mr. Schorr is testifying today, and why he is testifying about what happened, if you will, with the Village Voice publication and Mr. Felker.

Mr. Schorr was not a part in any way of the editorial process that went on at the Village Voice, as he has testified, and he is willing to testify with respect to any contacts that were made of an outside nature, outside of his ordinary employment in a sense, with CBS. He will not discuss any activities that went on within CBS. As he has indicated earlier they are part of an editorial process that he considers to be privileged, a part of an editorial process that we have argued is privileged, and part of an editorial process that we believe the House ruled on in 1971 when they refused to cite Dr. Stanton for contempt. So he will respond to your question in line with those theories.

Mr. MARSHALL. Will you respond to my question, please?

Mr. SCHORR. Yes.

I discussed it with—I first asked—I first asked the Reporters Committee through the person of Fred Graham, who is a trustee of the Reporters Committee.

Mr. MARSHALL. Mr. Schorr, I cannot quite hear you. Would you speak more directly into the microphone?

Mr. SCHORR. I'm sorry.

I haven't used microphones for a long time.

Mr. MARSHALL. I couldn't even hear that comment.

Mr. SCHORR. The comment was I have not used microphones for a long time.

The reply to your question is through the person of Fred Graham, as trustee of the Reporters Committee, I discussed with the Reporters Committee the idea that if the thing was published as a book, and inevitably a publisher wished to pay royalties for it, I was very anxious to avoid any check arriving in my mail box because the one thing I was clear about was I had to avoid any remuneration for this. And, therefore, I suggested that if royalties were offered, I should like to say whatever proceeds you think should go to me, I would prefer to go to a charity, in this case the Reporters Committee for Freedom of the Press, because I thought that was associated with the purpose of what I was doing. So I talked to Fred Graham, who I understand had discussions with others in the Reporters Committee for Freedom of the Press. That resulted in my having telephone contact with Peter Tufo, who was designated as a person, attorney, but who apparently was knowledgeable of the publishing industry in New York, and who undertook to see whether he could find a publisher. I believe there were contacts made with perhaps two publishers.

In addition, I talked to my own business adviser, because he is in New York, and has been involved in publishing arrangements before. His name is Richard Liebner, of the firm of N.S. Bienstock, Inc.

That was basically it.

There were other discussions that came in the form of mainly inquiries from some who had seen me show the thing on television, to ask me whether I would be interested in publishing it, and offering assistance in publishing it, but they were just inquiries that never resulted in anything.

Mr. MARSHALL. Who were the two publishers that were contacted as you understand it by Mr. Tufo?

Mr. SCHORR. I believe they were Bantam and Dell Publishing Cos.

Mr. MARSHALL. Did any of the persons who were contacted by Mr. Tufo, insofar as you know, give any reason for refusing to publish the report?

Mr. SCHORR. It was represented to me by Mr. Tufo that one of the problems was that an atmosphere prevailed in Washington, generated by the CIA, perhaps, and by the administration, which consisted of a kind of backlash against investigation of the intelligence community and a spreading fear that anything you now publish with regard to intelligence would kill an agent in the way that the tragic murder of Richard Welch took place in Athens. So, that was a rather chilling atmosphere in which I was told that publishers were very nervous about public documents that concerned intelligence. I felt they misunderstood. I knew that the document, could not possibly have that effect, because it mentioned no agents. But I was given that as one of the reasons, a nervousness in the publishing industry as a result of a kind of secrecy backlash in Washington.

Mr. MARSHALL. Were there any other reasons which were given to you for those parties refusing to take part in publication of the report?

Mr. SCHORR. None that I can recall.

Mr. MARSHALL. Now——

Mr. FLYNT. The bells have sounded.

Three bells have sounded, indicating a quorum call is in progress in the House presently. Accordingly, the committee will stand in recess until 2 o'clock, at which time, Mr. Schorr, you, and Mr. Califano are requested to return.

Mr. SCHORR. Thank you, sir.

Mr. FLYNT. The committee stands in recess until 2 o'clock.

[Whereupon, at 12:30 p.m., the committee was recessed to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. FLYNT. The committee will come to order.

The Chair would just like to state that the announced recess was until 2 o'clock. I think perhaps everyone in the hearing room is aware of the fact that quorum calls and recorded votes frequently throw our schedules a little awry.

The slight delay in reconvening was unavoidable because a recorded aye and nay vote was called shortly before 2 o'clock.

A quorum is present for the purpose of taking testimony and receiving evidence.

Counsel will proceed.

Mr. MARSHALL. Mr. Schorr——

Mr. FLYNT. Let the record also show that the witness is Mr. Daniel Schorr, and that, as before the recess, he is accompanied by his counsel, Mr. Joseph Califano.

Mr. MARSHALL. Mr. Schorr, I remind you that you are still under oath. Would you respond for the record that you are aware of that?

Mr. SCHORR. I am aware of that.

Mr. MARSHALL. Mr. Schorr, when we recessed at the end of the morning session we were discussing publishers who might have been contacted concerning the report, and you had testified concerning reasons that you were aware of as to why certain publishers were unwilling to publish the report.

Was Mr. Clay Felker the only person who was willing to publish the report, to your knowledge?

Mr. SCHORR. It was so represented to me by Mr. Tufo.

Mr. MARSHALL. Did Mr. Tufo state any other persons who had been contacted other than the person you identified in the morning session?

Mr. SCHORR. Not that I can now recollect.

He made some general statement at one point that he had canvassed the field, but those are the only two publishers that I recall his mentioning specifically.

Mr. MARSHALL. The only two publishers?

Mr. SCHORR. Dell and Bantam, yes, were the only two whose names I recall his mentioning, although he gave general indication that he had canvassed the field.

Mr. MARSHALL. When you say canvassed the field, did you understand him to mean that he had looked at other persons and attempted to get them to consider publishing the report?

Mr. SCHORR. Yes; but I would not want my testimony to indicate specifically that he had done something which I am not sure he did. These conversations were brief and general, and on the telephone with someone I had never met, and I might have misinterpreted, but he did leave with me the impression that whatever could be done to find a publisher he had done. But as to names of specific publishers, I recall mention of only two.

Mr. MARSHALL. Now, you heard Mr. Felker's testimony in the morning session concerning financial arrangements which were discussed between the Village Voice and the Reporters' Committee for Freedom of the Press.

Mr. SCHORR. I did.

Mr. MARSHALL. Did you take any part in the financial discussions that were, that took place?

Mr. SCHORR. No; on the contrary, at one point when Mr. Tufo proposed to explain to me the financial discussions that he was involved in I cut him short and said I have nothing to do with your financial discussions, and I didn't want to know about them.

Mr. MARSHALL. Was it your idea that the payment to the Reporters' Committee for Freedom of the Press was an appropriate way for the Village Voice to express its appreciation for receipt of the report?

Mr. SCHORR. If you will amend Village Voice to say the Felker Enterprises, it was my hope that a contribution would be made to the Reporters' Committee for Freedom of the Press.

Mr. MARSHALL. Did that idea originate with you?

Mr. SCHORR. Yes; it did.

Mr. MARSHALL. And did you pass that idea along to Mr. Tufo?

Mr. SCHORR. Yes; I did. Well, I passed it along to the Reporters' Committee, which then contacted Mr. Tufo informing him of my desires, so that by the time I first spoke to him he was aware of my wish.

Mr. MARSHALL. Is it your testimony then that once you thought of the idea you went to the Reporters' Committee, who then contacted Mr. Tufo?

Mr. SCHORR. That is correct.

Mr. MARSHALL. Did the Reporters' Committee state to you that it was willing to receive such a contribution?

Mr. SCHORR. Mr. Graham represented to me that the available trustees of the Reporters' Committee had been contacted by telephone and were so willing; yes.

Mr. MARSHALL. At the time you contacted Mr. Graham for the Reporters' Committee, did you advise Mr. Graham, the circumstances surrounding your making the report available to Mr. Felker?

Mr. SCHORR. At the time that I contacted Mr. Graham, Mr. Felker had not yet entered into the picture. This was at an earlier stage when it was still unknown where it would be published.

The arrangement was whoever published it, if the Reporters' Committee were willing to receive it, I would designate any proceeds that any body thought they would want to pay me, especially since at an earlier stage I thought of writing an introduction and doing some other editorial work myself, so the original concept was that for the complete publication, including my interpretation, and notation and introduction, whatever proceeds might be considered as being due to

me, I didn't want to receive, because I didn't want any money; but that was at a point where there was no specific place of publication in mind.

Mr. MARSHALL. Now, with regard to your obtaining the report from the original source that you have earlier refused to identify, did you make any money payment to that source in return for the report?

Mr. SCHORR. My hesitation, Mr. Counsel, is only on the grounds that I don't want to open up a series of questions with regard to the source.

My inclination would be very happily to reply to that question, and I am only troubled at this point about possible waiver. Would it satisfy you if I were to say that no money was ever discussed with anyone in connection with my receipt of the report?

Mr. MARSHALL. If you are referring, responding to the question I have asked, and you mean by that response that you made no payment to the person from whom you received the report, then that would be an answer.

Mr. SCHORR. No money ever changed hands in any way in any connection with the report. I couch it generally only; not that I wish to be unresponsive to the question. I am rather anxious to be responsive to that question, but I am only afraid of anything that would open the door to other questions about the source.

Mr. MARSHALL. Would you agree with me that when you couched your answer generally that it also refers to specifics?

Mr. SCHORR. It seems to be a reasonable interpretation, doesn't it?

Mr. MARSHALL. Would you agree with that?

Mr. SCHORR. Certainly it's reasonable.

Mr. MARSHALL. I need an answer to the question, Mr. Schorr.

Mr. SCHORR. I agree with that. I am advised that.

Mr. MARSHALL. I have no further questions at this time.

Mr. FLYNT. Mr. Teague?

Mr. TEAGUE. No questions.

Mr. FLYNT. Mr. Spence?

Mr. SPENCE. Yes, Mr. Chairman.

Mr. Schorr, in the Washington Star of September 3, 1976, you were quoted as saying: "If I got it, others could have gotten it. Perhaps the Soviet intelligence could have gotten it. They have got to keep order in their own house." I suppose you are speaking of the House of Representatives.

Did you say this to the reporter in the Washington Star?

Mr. SCHORR. I did.

Mr. SPENCE. That is your problem, you see. We are trying to keep order in our own house, and we have asked questions of people all over the place, and we haven't been able to get the answers. And so there you are, and you have the answer, and I can understand your position, but we have a problem, too.

Mr. SCHORR. Mr. Spence, may I address myself to your problem?

Mr. SPENCE. Yes, sir, that is what I wanted to have you do.

Mr. SCHORR. I am not an absolutist on this question of publication versus the sensitivity of keeping confidential material confidential either by the executive branch of Government or by the legislative branch of Government.

I do deeply appreciate your problem. I believe your functioning as the House of Representatives and as a part of Congress is to legislate and as part of legislating to get information which occasionally is classified and confidential and to be able to maintain enough security over that information so that you can hope to get further information from the executive branch.

It is not a problem that I am not unaware of.

But, my position and my deep feeling on the subject is that as I suggested in this interview with the Evening Star, that to the extent that you can, by policing your own house, small "h," find out what went wrong, and then recommend procedures for improvement of it, is a perfectly legitimate and necessary function of a body of this Congress.

But when the point comes that you cross over and try, once the horse, or in this case, the report, has left the stable, to recapture it and chase the reporter and say either give it back or tell us how you got it, then you cross that very delicate, fragile, important line, that has to do with what is your legitimate function, and what is our legitimate function.

It seems to me you already know enough to know the procedures left something to be desired.

Mr. SPENCE. Well, I do have a little problem too with the fact, as I indicated earlier this morning to another witness, that one person, no matter who that person might be, be he or she a reporter or just a member of the public or Member of Congress, that one person could have enough knowledge to be able to say if this publication will or will not harm national security.

You see, at least we are selected by the people to look out for them in national security, and then here's a person who hadn't been elected by anybody, might have been hired by somebody, but who doesn't have the authority to speak for anybody else really.

Mr. SCHORR. Mr. Spence, 9 members of this body had voted that that report would not harm national security and these were 9 members of 13 that had worked with that material, who had dealt with the CIA, made certain changes, made certain deletions at their request, and had voted not to make other deletions. It really wasn't a person, it was a committee of this austere body.

Mr. SPENCE. And overwhelmingly we rejected, too, their decision, and I might add that I put them in the same category. I don't think they have the power or the authority to do that. As a matter of fact, the House made it pretty clear they didn't have.

Mr. SCHORR. Would you forgive me if I didn't enter into disputes with others in this House?

Mr. SPENCE. Yes, sir. You said in your statement, and I can understand that, "I have never yielded to a demand for the disclosure of a source that I had promised to protect."

Is this just something that you take a position on in this particular case?

Mr. SCHORR. No, sir.

Mr. SPENCE. Is there any case you can think of, any situation where you would reveal your source?

Mr. SCHORR. No; I cannot conceive of a situation where I would reveal a source that I had promised to protect.

Mr. SPENCE. Well, you see, when you talk about national security, that is a vague thing. People can hide behind it, and everything. It doesn't get down to the life of a person.

Mr. SCHORR. Right.

Mr. SPENCE. It might be the life of a whole country, and our way of life and freedom of the press and all of the rest.

Mr. SCHORR. Right, right.

Mr. SPENCE. But, what if a man were going to be executed tomorrow for the crime of murder, and you had information from a source that that person was not guilty? To save his life would you reveal your source? That is getting it down where everybody can understand it, the life of one person versus this protection you think you have.

Now, that is getting it down where we can all understand it.

Mr. SCHORR. Mr. Spence, I respectfully submit to you the question is so hypothetical I don't know how to address it. I don't understand what a situation would be where the identity of a source would save a person's life.

The information might, but why the source?

Mr. SPENCE. If you tell who the source is, they can go find out who the source is, and save that man's life. That fellow's life is pretty important and he would disagree with you.

Mr. SCHORR. Mr. Spence, I am not an absolutist about anything, and I would not say flatly that if a life of a person could be saved by revealing a source, although I can't understand how that would work, I make no absolute statements.

I have never known of a situation where the balance between the importance of protecting a source was ever in my 40 years in journalism outweighed by other consideration.

Mr. SPENCE. That's the answer I wanted, you see, because it's not in all cases, this right is not absolute that you claim you have.

Mr. SCHORR. Very little in life is.

Mr. SPENCE. Well, that is what I am getting around to, but it has been portrayed as being an absolute thing. For 40 years it's a personal thing, and principle, and all of this, and I hate to ever make flat statements, and I didn't think you wanted to.

Thank you very much.

Mr. FLYNT. Mr. Foley?

Mr. FOLEY. Mr. Chairman, I don't have any questions. I find myself very much in agreement with Mr. Schorr's judgment that this Congress and committee have the power and perhaps the responsibility to make a diligent inquiry as to whether its officers, employees or Members of the House of Representatives had violated any of its rules. But I share with him the concern that when the committee calls members of the press and seeks to inquire into sources, it crosses, or may begin to cross, a very delicate constitutional barrier.

I have no questions of him. I will state again my belief that it would have been better for the committee not to engage in the issuance of the subpoenas, or pose questions that have been posed to the witnesses today.

Thank you very much, Mr. Chairman.

Mr. FLYNT. Mr. Quillen?

Mr. QUILLLEN. Thank you, Mr. Chairman.

Mr. Schorr, in answer to an earlier question you said that, or rather you refused to reveal, the number of copies of the report you made

and went further to say that the news process was also protected by the first amendment.

Do you mean to tell me that the news process, how many Xerox copies you made of a report and the process that you went through in the development of the story is also protected under the first amendment?

Mr. SCHORR. I so believe, Mr. Quillen. I do believe that in this case the number of copies made implies a question about the distribution of the copies, begins to get into the issue of who makes what decision when, what would you consult about, who says what you will do, and what you will not do with the news, and how it will be handled, and the first general question in that whole general area, which I believe to be the process of the work product inside of a news organization, would have to have been the number of copies made, and on that ground I respectfully decline to reply.

Mr. QUILLEN. Well then, by inference you have led this member to believe that what happens in that process is secret as far as the reporter is concerned, as far as others in the news process are concerned. Yet, at the same time you defy Congress in saying that anything a committee does, anything that the House of Representatives does, is open to the public.

Now, which side, which show is on, and which side of the mouth are we talking out of?

Mr. SCHORR. Mr. Quillen, I submit to you that that is only a superficial paradox. What happens inside a news organization is not necessarily secret, it's written up in journalism books.

The time, however, when it must become secret is when a subpoena is used to try to compel the production of information about the specifics of that process, because the element of compulsion involved in this is a chilling element for future consultation.

Mr. QUILLEN. I don't question your sincerity, Mr. Schorr. Quite frankly, I think you are a dedicated reporter. Would you classify yourself as an investigative reporter?

Mr. SCHORR. Others have. I think at 60 it's a little old to be an investigative reporter; but if it's meant as a compliment I accept it and if it's meant otherwise, I reject it.

Mr. QUILLEN. Well, let's do it in a favorable way as a compliment then. Would you say that in your career, and you have had a distinguished career, and you still will have many more years of fruitful labor I am sure, have you ever made any mistakes in your reporting that you later regretted?

Mr. SCHORR. Yes, sir.

Mr. QUILLEN. Did you protect yourself under the first amendment?

Mr. SCHORR. In what sense, by not correcting my mistakes, or not saying that this was an error?

Mr. QUILLEN. Maybe some expose stories, or coverups or things that maybe that you later found out that you were not exactly accurate in reporting, did you stand up to it, did you face up to it, did you stand under the first amendment?

Mr. SCHORR. Do I understand your question to be would I use the first amendment simply to cover up the journalistic error in order to avoid correcting that error?

Mr. QUILLEN. That is one way of putting it; yes.

Mr. SCHORR. No. Usually the organization I worked for wouldn't let me.

Mr. QUILLEN. Well, I am sure—have you worked for only one organization, Mr. Schorr?

Mr. SCHORR. No, sir, only for the past 23 years for one organization. But there have been others before then.

Mr. QUILLEN. Did you ever send any material to the Village Voice or the New York magazine and receive compensation for it?

Mr. SCHORR. Every time I hesitate it's because I have to ask my lawyer if there is a waiver problem here. The answer is "No."

Mr. QUILLEN. How many people, and this question is phrased a little differently, how many people know of your source?

Mr. SCHORR. How many people know of my source?

Mr. QUILLEN. Yes.

Mr. SCHORR. I don't know how many people know of my source.

Mr. QUILLEN. You don't?

Mr. SCHORR. No. Couldn't possibly.

Mr. QUILLEN. In other words, you wouldn't know whether it's one? It's bound to be one, the person who handed it to you.

Mr. SCHORR. Mr. Quillen, let me try to understand the question.

Mr. QUILLEN. Or would it be two?

Mr. SCHORR. The question you are asking is how many people know of my source. The only question you can ask is how many people know of my source from me, since I have no knowledge of how otherwise people might learn of my source.

You are asking a question to which I possibly cannot answer. If you understand what I mean. If your question is how many people have I told of my source, how many people of my knowledge do I know, know my source, the answer is two.

Mr. QUILLEN. Well, I think that puts it in perspective. I was getting around to that.

Thank you for helping me.

Mr. SCHORR. Those two are my attorney and my wife, both of whom I regard as privileged, and the reason I have trouble with you here is that I can only tell you what I know of my knowledge and I cannot tell you about the knowledge of other people.

Mr. QUILLEN. Of course there is one other. The person who gave you the report, and that's the one that you say that you are not going to reveal.

Well, Mr. Schorr, I don't know, I was in the newspaper business as a young man. I would think that the secrets of my country, particularly after the Congress, the House of Representatives voted overwhelmingly not to make it public, that I would have in my newspaper career, I would have respected that opinion, but I guess times have changed, and things move on.

I am not going to delay this, but I wish you would come forth and for the benefit of our country. Thank you, Mr. Chairman.

Mr. SCHORR. Sir, I respect your opinion, and let me only say that I, by my rights, respect my rights and your rights, but by my rights I cannot come forward with it for the benefit of the country.

Mr. QUILLEN. I understand your sincerity, Mr. Schorr, and I respect it.

Mr. FLYNT. Mr. Price?

Mr. PRICE. No questions.

Mr. FLYNT. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Mr. FLYNT. Mr. Hébert?

Mr. HÉBERT. No questions.

Mr. FLYNT. Mr. Mitchell?

Mr. MITCHELL. Thank you, Mr. Chairman.

Just for the record, I thought counsel's characterization of our hearings as some kind of a game was unfortunate. I think counsel was guilty of one significant omission in his statements, and that was the fact that Congress voted 2 to 1 requesting that we determine some way to preserve our Nation's secrets, at least as part of our recommendations.

I think that is part of our job, and believe me, Mr. Counsel, it's been anything but a game.

The Congress, as you know, has spent upwards of \$150,000. We have spent day after day after day in the various committee hearings listening to testimony.

We have had investigators questioning many, many people, hundreds of hours of interrogation. There are reputations at stake. Some individuals feel that the intelligence capability of our country may well be at stake until we can clamp down and determine some way to keep secrets.

Now, I want to say to you and Mr. Schorr that perhaps you can help us in our final report. This is one of our duties too, and I am pleased to learn that you are not an absolutist, because maybe that will help us a little bit there, too.

You would agree that our Nation must be able to keep some secrets?

Mr. SCHORR. Yes, sir.

Mr. MITCHELL. And you would agree that we must have an intelligence capability in this United States, and the Congress must be able to take a look at what the intelligence agencies are doing and prevent abuses, would you agree?

Mr. SCHORR. I wish they would take a better look than they have.

Mr. MITCHELL. Right. But in order to do that would you agree we must be able to keep secrets while we are overseeing the intelligence agencies?

Mr. SCHORR. Yes, sir.

Mr. MITCHELL. You are aware that the House, of course, you are aware that the House voted 2 to 1 not to release that document and you are aware probably, too, that a vote by the House of Representatives overrules a vote by a committee.

You mentioned nine members of a committee. Well, more than 200 members of the House voted to overrule that particular committee action.

Would you agree, Mr. Schorr, that in an extreme situation the inability to keep secrets and/or provide oversight capability could conceivably destroy the very country that is offering these freedoms?

Mr. SCHORR. Yes, sir, I would agree with that. The difficulty is determining whether or not that situation exists. There have been situations where the President, at least one where a President of the

United States, on the ground of national security, asked a newspaper not to publish information and later said he wished the paper had published the information, and I refer to President Kennedy in the Bay of Pigs.

There have been situations in which a President of the United States has cloaked a coverup of illegality with invocation of national security. If we could define it, we would have no problems between us.

Mr. MITCHELL. Well, one thing the committee certainly learned in these hearings, Mr. Schorr, was we do need an improved system of classification and we do need an improved system of declassification.

It's highly doubtful or it's questionable at least that that committee of the House could declassify those documents. The Senate has a provision for doing so; they call the entire Senate in and vote to do so. The House doesn't even have a procedure.

Let's take a look at a hypothetical situation. I get the feeling from your testimony you just don't believe there was anything in the report that should have been kept secret.

Mr. SCHORR. Well, I had to rely on the fact that a committee of the House believed that there was nothing that should have been kept secret, and my own reading of the report did not give me any reason to doubt that.

Mr. MITCHELL. And the only agency, as I know it, that has the power to classify, or the only agencies are the intelligence agencies, the CIA.

Mr. SCHORR. I beg your pardon?

Mr. MITCHELL. The only people who can classify information, as I understand it, are the executive branch, people in the executive branch of Government. The CIA has said that, I don't know whether they said it prior to your getting the report, but they told us that more than 25 percent of the document was highly classified.

The President of the United States had asked that the report not be published. The Congress voted not to publish the report.

Let me set up a hypothetical situation, Mr. Schorr.

I feel that you just don't believe those people who felt that the document should be kept secret until it could be sanitized, and I know many people in the country have that same problem, and God knows people in Government have given them many, many reasons for lack of trust of public officials.

But, let's take a hypothetical situation just so I can help get a feeling for a newsman's thinking.

Say the United States has an excellent system of classification, and I would be the first to admit it does not at the moment.

You respect that system as a reporter. Under those circumstances, you secure by one means or another a document that is stamped "Top Secret."

Would you, under those circumstances, feel compelled to publish that report?

Mr. SCHORR. My frank answer to you, Mr. Mitchell, is that while I do have a great respect for national security, I have very little respect for the system of classification. And that 30 years of experience with information, some of which was derived from highly classified information, has not increased my respect for the system of classification.

Therefore, let me address myself to what I think is your central question, and I think your question is the question that is frequently asked of journalists and a question that journalists have to consider, and I guess really that question is, if I have a piece of information which I can realize involves the security of, really the security as I recognize it, of the country or the security of persons or soldiers, troops, troopships, and CIA agents, would I in some absolute way say to hell with everybody, say to hell with everybody, I got it, I am going to publish it?

The answer is twofold. One is it's very rare you get such information because the people in Government are mostly quite loyal, and what is leaked tends to be overclassified material that people are outraged about. And we come to your ultimate question.

I am an American. I would be given pause if I thought it would do harm. It is only that in all these years of having gone through all of these things of the Pentagon papers, which they said would harm the national security, but the executive branch was unable to prove to the satisfaction of the judge in chambers that there was any significant damage to be done by publication, though they claimed that there would be irreparable damage, after having gone time after time, where the claim was made of damage, and being unable to discover a damage, you would—I remain a little dubious about classification as an instrument in itself.

Mr. MITCHELL. I think we have all learned to be a little dubious, Mr. Schorr, but in the hypothetical situation——

Mr. SCHORR. In the hypothetical situation I would be given great pause if I thought great harm would be done, yes, sir.

Mr. MITCHELL. Thank you, Mr. Schorr.

Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Mr. Schorr, would you consider it improper for you to identify your source if your source advised you that he or she had no objection to your revealing the source?

Mr. SCHORR. Mr. Bennett, is that a hypothetical question?

Mr. BENNETT. No. I did not intend it, because there is nothing in the record so far that indicates that your source has any objection.

Mr. SCHORR. I haven't, frankly, approached that kind of question. I am not quite sure—the answer is probably I would refuse, I don't know. I haven't thought it through.

Mr. BENNETT. Maybe I will ask you my next question and you can answer them both together. Maybe I will ask you the next question and you will get in context what I am trying to get at.

Since your statement to this point of time has not included a statement that your source objects to revealing the source, would you want to make a statement as to your source objecting or not objecting to revealing the source? And before you answer, I must say that as a former lawyer I somewhat question whether you have made a good case for the point that you are taking, because I know of nothing in the first amendment which would say that you have a right to protect something that the source doesn't desire for you to protect.

Mr. SCHORR. The quick answer to your question, sir, is that I said in my opening statement that we must keep confidential those matters

entrusted to us only because of the assurance that they would remain confidential, and the most crucial kind of such confidence is the identity of a source of information.

Mr. BENNETT. I read your statement with great care and then I paused and looked it over very carefully. The strongest statement you make is in the second paragraph on page 3 where you say, "In some 40 years of practicing journalism I never yielded to a demand for the disclosure of a source that I had to protect. I cannot do so now."

But, this, in fact, fails to say that the source has not relieved you by now, or that he promised or that you promised him in this particular case. In other words, you have gone all around it, but you haven't said it forthrightly, and it would seem to me from the standpoint of helping you make your case factually that perhaps I should have you and your lawyer confer as to whether or not you are asserting a right to remain silent when your source may not object.

Mr. SCHORR. I am having difficulty coping with the question. Any source that, any source that had no objection to being revealed could act on the source's own initiative.

Mr. BENNETT. Surely.

Mr. SCHORR. And if that has not happened——

Mr. BENNETT. Is it difficult for you to say that your source objects? That should be really easily solved by saying he does or doesn't.

Mr. SCHORR. The only difficulty, sir, frankly, is this minefield that lawyers tell me is called the waiver problem. There are a great many things which as a layman would not be very difficult for me to answer because the answers would come rather easily, but I am told you start on what is called, they are things that lawyers talk about called slippery slopes and waivers and things like that that you start on and open the door in certain areas, that then somebody claims that you have given up the right when it comes to more important things.

That is the only reason for my hesitation, but let me find out.

The source requested confidentiality, and the source has never released me from that request and promise.

Mr. BENNETT. Then my final question to you is that did you ever say to your wife or your attorney that the CIA gave you this report?

Mr. CALIFANO. Mr. Bennett, let me, as Mr. Schorr's attorney, say that, and I believe you are an attorney as well——

Mr. BENNETT. I used to be. I don't practice now.

Mr. CALIFANO. That his conversations with his attorney and his wife we regard as privileged.

Mr. BENNETT. Well, they are privileged, but I think they could be waived. So, I am asking the question.

Mr. SCHORR. With due respect, I choose not to waive anything right now.

Mr. BENNETT. I want to reassure——

Mr. FLYNT. Just a minute.

Mr. Schorr, I must at this time advise the witness that this committee is acting pursuant to the authority vested in it by Resolutions 1042 and 1054 of the House of Representatives, 94th Congress.

Copies of those resolutions and the opening statement of the chairman of this committee setting out the legislative purposes of these hearings were served upon you prior to your appearance as a witness here today.

The subject of these hearings is an inquiry into the circumstances surrounding the publication in the Village Voice of the text and of any part of the report of the House Select Committee on Intelligence so that this committee can report back to the House its findings and recommendations thereon.

The question put to you is pertinent to the subject under inquiry in that the identity of the person from whom the text and any part of the report were obtained and the method by which the text and any part of that report were obtained constitute evidence of the circumstances surrounding publication of the text and any part of that report.

Your answer to the question put to you is necessary for this committee to carry out the mandate of the House of Representatives.

If you continue to refuse to answer the question, your refusal will be deemed by this committee to constitute a willful failure to answer a question pertinent to the subject under inquiry and will subject you to prosecution and punishment by fine or imprisonment or both under title 2 of the United States Code, sections 192, 193, and 194.

Your refusal to answer will also subject you to prosecution and punishment for contempt of the House of Representatives.

Accordingly, you are advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mr. SCHORR. Mr. Chairman, on the ground of the first amendment privilege, and in this case on the additional ground of attorney-client privilege, and wife-husband privilege, I respectfully decline to answer that question.

Mr. FLYNT. Mr. Bennett, you may proceed.

Mr. BENNETT. Well, in view of the fact that your lawyer has allowed you to answer the basic question which I really wanted to inquire about, you can really see I was not trying to be slippery. I really felt there was a defect in what you had said, and it's now been clarified for the record, and I appreciate it.

I am not in any way attempting to do anything slippery or open up anything that would be hurtful. I haven't briefed the laws on the subject. I just thought it was an essential part of the first amendment protection of source that if the source had no objection, the press could not decline on that basis.

Mr. FLYNT. Mr. Cochran?

Mr. COCHRAN. Thank you, Mr. Chairman.

Mr. Schorr, I noticed in your statement that you made initially you pointed out your regret that the committee had issued a subpoena to you, and how this is somewhat like crossing the constitutional Great Divide, which separates the Congress from the press.

I want to observe in respect of that statement that I frankly think that that great divide has been crossed twice before this committee ever commenced its investigation, and it was crossed first of all when you elected in your own wisdom and in accordance with your conscience and good judgment, to cause a copy of the report of the select committee to be published, and second, I think that great divide was crossed by the House when it adopted the Stratton resolution directing this

committee to commence this investigation, which is a pretty broad directive to the committee to investigate circumstances surrounding the publication of the select committee report.

I don't really feel, therefore, that this committee ought to bear the brunt of these feelings, but that if the feelings are well placed, they ought to be placed at the feet of the entire Congress and not just this committee.

We are doing a job none of us asked to do, and it's a very difficult job, as you can appreciate.

So that the issuance of the subpoena is certainly not a reflection of our view toward you as a person, but rather a view toward our obligation that was placed upon us by the full House of Representatives to fully explore the circumstances surrounding the publication of the report.

Since you caused it to be published, it follows that we certainly have a duty to ask you at least where you got the report, and what you thought you were authorized to do under the Constitution with respect to a report that the House had voted to be kept secret.

In that regard I think the counsel, in stating in his remarks to the committee that the resolution the House adopted to keep the report secret was not directed at you, but rather was directed at the Select Committee on Intelligence, may not tell the whole story.

The Constitution doesn't just exist to contain the first amendment, which we are glad it does, but it also contains an article, in article 1, section 5, a provision that empowers the House of Representatives to keep certain of its proceedings secret.

That provision was referred to by counsel in a brief he filed before the committee, but it says simply that each House shall keep a journal of its proceedings and from time to time publish the same except such parts as may, in their judgment, require secrecy.

Now, I suppose my question then to you is how can that provision, which empowers the House to keep certain of its proceedings secret, have any utility whatsoever if it only seeks to bind Members of the House or a committee of the House?

It seems to me that to have any utility whatsoever, and I ask you if you do not agree, that it has to bind all of those who might have access to such proceedings.

Mr. SCHORR. Mr. Cochran, I most emphatically do not agree.

Leaving aside the question as to whether the provision concerning the journal is even applicable to a report of a committee, which I understand is itself a contentious matter, and coming directly to the heart of your argument, I emphatically do not agree that the House has the right to reach out and try to enforce its rules by reaching out to the free press and establishing, in fact, a gag order.

It is my deep conviction, based on a certain study of how the Constitution came to be written, that the function of this House and the function of the press are quite different as viewed by the Constitution.

This House was created to be responsive to the political will of its constituency, which may change from time to time, and the House as it did on January 29, regarded itself as responding to what its constituents wanted when it decided that a report which the taxpayers' money had paid for and had been commissioned by the House should not in that form be released, and I appreciate that as a proper function

of the House, responsive to the will of the people, which may in different climates change.

The press was given a different function. The press, as I see it in the Constitution, was given the function of monitoring what the Government does, of giving people information, even information which may at that moment not be popular.

Perhaps information which people didn't want at that time. Because how could they ever change their minds or be informed if they didn't get all of the information possible?

The line that goes there is yes, the House has a full right and the necessary powers to be able to clean its house, to close its doors, to plug its leaks. I understand that.

There is a necessary tension between what you do and what I do. But once it's out, if you go and try to chase it down, and call it back and punish the one who has published it, then I think you have gone too far.

Because, if I may just conclude in one line, because the function of the press, as stated by some of the writers of the Constitution, was to expose the secrets of Government, and to let the people know everything that it was doing, and how in God's name can we expose the secrets of Government and let the people know what this Government is doing if we can only expose what you say we can expose?

Mr. COCHRAN. OK. Well, it may be a good point that you make if, in fact, the publication of the report had occurred at a time prior to the vote of the full House of Representatives on the question of whether or not to permit the publication of the House select committee's report, in my judgment.

Certainly we would not want to exercise the power to go out and try to retrieve a document that had previously been given to you at a time when that release was neither unlawful nor violative of any House rule.

Mr. SCHORR. Is it unlawful to your mind now?

Mr. COCHRAN. I think that there is a serious question about whether or not it is. I have not reached that decision yet, and that is why I am exploring this line of questioning with you, to try to help make up my mind about it. I don't think it's as simple, for instance, as counsel and as you have just seemed to indicate it is.

For instance, if you try to compare, as you did in the questioning with Mr. Mitchell, the gentleman from New York, the classification system which the House has the power to impose, and that which the executive branch, through its CIA or FBI, or whatever agency seeks to impose, I think that is an error, too, and that there is not just one classification system in the Government.

But the Congress is peculiarly entrusted with a power because it does, in fact, represent the people of the country to keep whatever proceedings it may chose, whether wise or not, secret, and when it exercises that power, then that power, I think, must be given very strong weight.

I think, that it's not just as in the *Pentagon Papers* case, where it must be shown that the publication of the report or the papers actually contained information that is harmful, in fact, to the country. Therefore, I think, too, that a good argument can be made for the fact that it matters not whether the content of the report did, in fact, contain harmful information.

The power that is entrusted in the House seems to be that it can, as a lawful exercise or proper exercise of its powers, keep its proceedings secret.

I know counsel in his brief suggested that it was probably not appropriate in this case to invoke article 1, section 5 of the Constitution because the House select committee's report was not a part of the journal.

He makes that point. But, of course, there is no Supreme Court case that has decided whether or not a report has to be a part of the journal as it is known now in custom and usage, or not, or at least I haven't been able to find a Supreme Court case that says that.

As a matter of fact, the following section of that same article 1 grants to Members the right not to be questioned in any other place for something they have said in speech or debate in either House and has been expanded to include what is said or what is contained in a committee report or any proceeding in either House.

Therefore, I think you could just as easily say that a report of a committee of the House is a proceeding of the House, whether or not it is in the Journal as it was suggested by counsel that it should be.

I haven't come to a conclusion about it, and I am not suggesting that I have decided that this is violative of that power or the exercise of that power.

I want to say further that I support you 100 percent, or if the vogue is 1,000 percent or whatever it is, in your refusal to disclose your source. I don't think you ought to be made or asked to. We can ask you and if you say you are not going to tell us, I think we ought to let it go at that, and that is my view of that.

But I think there is a serious question, I really do, with respect to the other constitutional confrontation that has befallen us, and it's not of this committee's making. I want to say certainly not of mine.

Mr. SCHORR. If you would like me, Mr. Cochran, to say I regret not only the subpoena, but the Stratton resolution, I will be happy to.

Mr. COCHRAN. I understand you probably would regret that, but I did feel that that point ought to be made.

Thank you, Mr. Chairman.

Mr. FLYNT. Counsel to the committee?

Mr. MARSHALL. Mr. Schorr, so that the record will be clear, I will ask a very few brief questions. At the time you obtained the report from whatever source you obtained it, you were employed as a reporter by CBS, is that right?

Mr. SCHORR. Yes.

Mr. MARSHALL. And you were not employed as a reporter by any other legal entity?

Mr. SCHORR. Yes, sir.

Mr. MARSHALL. At the time you made the report available to Mr. Felker, you were employed solely by CBS?

Mr. SCHORR. Yes, sir.

Mr. MARSHALL. Am I correct in understanding your testimony that both at the time you obtained the report and at the time you made the report available to Mr. Felker, your sole means of employment was as a reporter for CBS. Is that correct?

Mr. SCHORR. Yes.

Mr. MARSHALL. All right. Now, you were not employed by Mr. Clay Felker at either of those two times, were you?

Mr. SCHORR. No, sir.

Mr. MARSHALL. And you were not employed by the Village Voice at either of those two times?

Mr. SCHORR. No, sir.

Mr. MARSHALL. And you were not employed by the New York magazine at either of those two times?

Mr. SCHORR. No.

Mr. MARSHALL. Then you were not employed by any other member of the media, that is press or TV or other publication type organization?

Mr. SCHORR. No, sir, solely and exclusively by CBS News.

Mr. MARSHALL. That is all I have.

Mr. FLYNT. Further questions on my right? Or further questions on my left?

Mr. QUILLEN. Mr. Chairman, just one other question, an observation, and maybe a question.

I think the impression which has been left here today is that the media and press throughout the country is unanimously behind you, Mr. Schorr. And that is not true.

I remember reading an editorial I believe in "Editor & Publisher" where they did not agree with your leak of the report, and there have been literally hundreds of editorials in newspapers throughout the country who do not agree with what you did, and I thought for the record we ought to say that the media itself, or collectively, I won't say in majority, but in good numbers, do not agree with what you did. And they also take exception to the standing behind the first amendment.

So I just wanted to make that statement, and if you have any comment I would be happy to receive it.

Mr. SCHORR. Yes, sir, I have one brief comment on that. The gentleman is correct in saying there has been something less than unanimity and a great chorus of personal praise for me since last January and February, to which I would only add, in response to what you have said about the first amendment, that since the subpoena was issued that the criticism is less and the support has become much greater.

Mr. QUILLEN. Well, I haven't been out into the hinterland to get the observation, but time will tell. Has Editor & Publisher changed its position?

Mr. SCHORR. I don't know, sir, I have not been in consultation with them, I have been very busy preparing for today.

Mr. QUILLEN. Thank you, Mr. Chairman.

Mr. FLYNT. Mr. Bennett?

Mr. BENNETT. Well, as a person who thought we ought to have the subpoena, I am somewhat troubled by your point of view. Perhaps we don't have a complete communication here. I don't know, but I understand that you did not want to voluntarily come before the committee, and the committee was given the responsibility, which we didn't ask for, by Congress, to look into all of the circumstances, and I never felt when I voted for the subpoena, in fact, I think I offered the amendment or offered the motion, that it had anything to do with other than fulfilling the responsibility that was on our shoulders to get all of the facts.

If you had voluntarily come before the committee it wouldn't have been necessary to have the subpoena, but the subpoena does not necessarily move toward anything destructive to you.

You are an American citizen, we are asking you to help the committee get—it's ordered by Congress, information, and I think perhaps it's so close to you that maybe you took a little umbrage at something which really so far is not justified by the record, or by the feeling of certainly some Members who voted for the subpoena.

I hope you will think about that at least. I am not necessarily asking for a response, but I do think the record ought to be clear that just because the committee voted to have a subpoena in no way prejudged you.

It was just ordered that this committee bring in all of the information it could obtain by volunteering on your part to come in and give the information.

The committee was under orders from Congress to put, as I see it, to have a subpoena to have you bring in whatever you wanted to bring in or were willing to bring in under subpoena, so I don't think you should take the issuance of a subpoena as being any affront to you, or judgment on you, but simply carrying out the processes that Congress has ordered this committee to fulfill.

Mr. SCHORR. Thank you, sir.

Mr. BENNETT. I have no further questions.

Mr. FLYNT. Mr. Schorr, you and your counsel, Mr. Califano, may step down.

You are excused from your subpoena. Strike that. We do not excuse you from your subpoena, because we continue to demand the answering of questions which you have previously refused to answer, and for the production of and your refusal to produce the documents, the committee still insists upon its rights to the answers to the questions which you refuse to answer, and the production of the documents which you refuse to produce.

You may step down, and you will be notified in the event the committee has any further questions at any further time.

Mr. SCHORR. Thank you, sir.

[The following material, previously referred to, was received for the record:]

September 13, 1976

SUMMARY OF THE MEMORANDUM SUBMITTED TO THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
OF THE HOUSE OF REPRESENTATIVES IN SUPPORT OF
DANIEL SCHORR'S CONSTITUTIONAL RIGHT
NOT TO DISCLOSE THE IDENTITY OF HIS
CONFIDENTIAL NEWS SOURCE

Conclusions

UNDER THE CONSTITUTION, THE HOUSE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT CANNOT PUNISH DANIEL SCHORR EITHER (1) FOR REFUSING TO IDENTIFY THE CONFIDENTIAL NEWS SOURCE OF A COPY OF THE FINAL REPORT OF THE HOUSE SELECT COMMITTEE ON INTELLIGENCE OR (2) FOR MAKING THE SELECT COMMITTEE'S FINAL REPORT AVAILABLE FOR PUBLICATION IN THE VILLAGE VOICE.

On January 23, 1976, the Select Committee on Intelligence voted to approve its final report and to make it public. As evidenced by the timing of his news broadcasts and by the Ethic Committee's own investigation, Daniel Schorr received a copy of the Select Committee's final report shortly after the Committee had authorized its release. Mr. Schorr received his copy of the final report, however, before the full House passed House Resolution 982 on January 29, 1976. House Resolution 982 in effect revoked the Select Committee's decision to release its report publicly and required that additional conditions be met before the report could be released officially. -

Four critical facts form the backdrop of Daniel Schorr's invocation of his First Amendment right not to disclose the identity of his confidential source and his argument that he cannot lawfully be punished for making the final report of the Select Committee available to the Village Voice.

- First, at the time Daniel Schorr received a copy of the Select Committee on Intelligence's final report, the Select Committee had authorized the report's publication and the full House had not yet imposed additional conditions on its official release.
- Second, no resolution, rule or regulation of the House of Representatives, or of its Committees, prohibited the transfer of the Select Committee's final report to Mr. Schorr at the time he received it, regardless of whether the transfer was effected by a member of the Legislative Branch, a member of the Executive Branch or a person outside the government.
- Third, at the time the Select Committee's final report was transferred to Mr. Schorr, no resolution, rule or regulation of the House of Representatives was violated, either by the confidential news source or by Mr. Schorr.
- Fourth, Mr. Schorr violated no resolution, rule or regulation of the House of Representatives in making the Select Committee's final report available to the Village Voice, especially since the terms of House Resolution 982, which overrode the Select Committee's decision to publish, did not in any way apply to Mr. Schorr.

UNDER THESE CIRCUMSTANCES, MR. SCHORR HAS A CONSTITUTIONAL RIGHT UNDER THE FREE PRESS CLAUSE OF THE FIRST AMENDMENT NOT TO DISCLOSE THE IDENTITY OF HIS CONFIDENTIAL NEWS SOURCE.

UNDER THESE CIRCUMSTANCES, MR. SCHORR CANNOT BE PUNISHED FOR MAKING HIS COPY OF THE FINAL REPORT OF THE SELECT COMMITTEE ON INTELLIGENCE AVAILABLE TO THE VILLAGE VOICE FOR PUBLICATION.

Background of Mr. Schorr's Appearance.

On August 26, 1976, the House Committee on Standards of Official Conduct (the House Ethics Committee) issued a sweeping subpoena to Mr. Schorr, commanding him to appear on Wednesday, September 15, 1976, and "to bring with him all books, records, correspondence, memoranda, papers, documents, writings or other tangible things which relate in any way to the subject matter of our inquiry including all drafts and copies of the reports of the Select Committee on Intelligence which were in existence prior to January 29, 1976, and which are in his custody, control or possession."

Mr. Schorr had obtained a copy of the final report of the Select Committee on Intelligence in his role as a journalist, had broadcast news stories from it to the American people on January 25, 26 and 28, 1976, and subsequently had made that report available to the Village Voice for publication.

The House Ethics Committee may formally demand that Mr. Schorr disclose the identity of the confidential news source who provided him with a copy of the Select Committee's final report.

If it does so, in exercise of his First Amendment right and in compliance with the dictates of his conscience, Mr. Schorr can not divulge the identity of his source or turn over to the Committee any copies of the report that might reveal the identity of that source.

The First Amendment Right to Protect Confidential News Sources.

The First Amendment of the Constitution provides that "Congress shall make no law . . . abridging freedom of . . . the press . . ." It is no accident that the First Amendment comes first or that it is explicitly directed at the Congress.

Freedom of the press is more than the freedom to publish and distribute news. The First Amendment also protects the right to gather news. As the Supreme Court has said, "without

some protection for seeking out the news, freedom of the press would be eviscerated." Branzburg v. Hayes, 408 U.S. 665, 681 (1972).

The First Amendment right to gather news in turn involves a right not to disclose the identities of confidential sources who so often provide the facts, insight, perspective and criticism which enable the American people to be truly informed. Without confidential sources -- and without constitutional protection for their identity -- the press could be reduced to the role of printing official statements and public affairs handouts. A captive press is the essential incubator of a people sufficiently passive to lose their freedom. There is no greater threat to our national security as a free democracy than a public which is not fully informed about matters of state.

The First Amendment right to gather news and to protect the identities of confidential news sources has been recognized by the Supreme Court, and subsequent to the Branzburg decision, by lower federal courts, by state courts and by published Department of Justice guidelines which protect against intrusion into a confidential reporter-source relationship. Under the free press case law, the judicial decisions involving the assertion of the First Amendment rights in the face of State and national legislative investigations, and the Department of Justice guidelines, the House Ethics Committee must meet three requirements before it should even consider a demand that Daniel Schorr disclose the identity of his confidential source:

- The disclosure of the source must be (a) substantially relevant to (b) a legitimate purpose that is (c) within the jurisdiction of the investigating committee.
- The investigating committee must exhaust alternative, nonmedia sources of information that would be less destructive of First Amendment values before attempting to force a reporter to divulge his confidential source.
- The investigating committee must demonstrate a compelling and overriding governmental interest in the purpose of the inquiry to justify any limitation or infringement of First Amendment liberties.

In the circumstances of this investigation, not even one of those requirements can be met.

The Identity of the Source is Not Related
to a Legitimate Legislative Purpose.

An examination of the Resolution establishing the Ethics Committee's present inquiry, and its legislative history, reveal that the purpose of this Committee's inquiry is exceedingly narrow. Despite the Ethics Committee's elaborate, expensive and wide-ranging inquiry into the security practices of the Select Committee on Intelligence, the present investigation was set up merely to determine Daniel Schorr's role after January 29, 1976, in the publication of the Select Committee's final report in the Village Voice and to recommend whether sanctions should be imposed on Mr. Schorr for that role.

Mr. Schorr's confidential news source is not relevant to that inquiry because the investigation is to focus on his actions after the House acted on January 29, 1976, to suppress the Select Committee's report, and Mr. Schorr received the report from his news source before January 29th. Moreover, since Mr. Schorr violated no resolution, rule or regulation of the House in receiving the Select Committee's final report, the name of his source is not relevant to any determination about what sanctions might be imposed on him for arranging the publication in the Village Voice. Under the Constitution, no sanctions may be imposed upon him by the House for his role in that publication. To hold the contrary view would violate Mr. Schorr's First Amendment right.

Chairman Flynt has claimed broader purposes for his Committee's present inquiry than the narrow goal of determining what sanctions, if any, to impose on Mr. Schorr. We submit that these purposes are not supported by the authorizing resolution and its legislative history. But, even if we assume that there are legitimate broader purposes underlying the Ethics Committee's investigation, the identity of Daniel Schorr's confidential news source is not relevant to any of them.

First, since no resolution, rule or regulation of the House was violated by the transferring of the Select Committee's report to Mr. Schorr, then the name of Mr. Schorr's source,

assuming for the sake of argument that the source was in the Legislative Branch, is not relevant to the purpose of disciplining House members or employees. Under our system of government, there can constitutionally be no discipline where there is no violation of rule, regulation or resolution.

Second, the name of Mr. Schorr's confidential news source is not relevant to an inquiry into the standards and conditions for handling allegedly classified information or for filing reports containing such information with the House. Under the terms of its authorizing resolution, the Select Committee vote on January 23, 1976, to approve its final report constituted what the Committee thought was proper release of the information in that report. Moreover, the January 23rd Select Committee vote constituted a Committee decision to publish the report and an honest and legally authorized judgment by the 9-4 Select Committee majority that publication of the information in the report would not harm the national security. Under these circumstances, and since the source violated no resolution, rule or regulation of the House, the identity of Mr. Schorr's source is totally irrelevant to any recommendations that the Ethics Committee might make about how to improve committee handling of sensitive information and the filing of sensitive reports with the clerk of the House.

The Other Tests Are Not Met.

First, the Ethics Committee has manifestly failed to exhaust nonmedia alternatives in seeking the source's identity, as the Constitution requires. For example, according to the Committee's own investigator, more than 30 copies of the Select Committee's final report existed in the Executive Branch on January 24, 1976. Yet the Ethics Committee called only five Executive Branch witnesses to testify under oath. Accordingly, there were numerous Executive Branch officials and employees who have not been called before the Ethics Committee, put under oath and asked if they were Daniel Schorr's news source or if they knew who that news source was.

Second, the Ethics Committee cannot demonstrate an overriding and compelling governmental interest in abridging Mr. Schorr's First Amendment rights and demanding that he disclose the identity of his confidential news source. This is so, in part, because neither Mr. Schorr nor his news source violated any resolution, rule or regulation of the House of Representatives.

But even more importantly, there is no overriding and compelling governmental interest which justifies an infringement of First Amendment rights because there was no material contained in the Village Voice version of the Select Committee's final report (a) which was not already in the public domain or (b) which would impair national security. A basic factual predicate for the Ethics Committee's broader investigation is that the Village Voice contained information which was both secret and harmful to national security. But Appendix A to Mr. Schorr's legal memorandum demonstrates that the information was neither.

That Appendix demonstrates that a high percentage of the Village Voice version of the Select Committee's final report had already appeared in public news reports or public broadcasts before the Village Voice publication. It demonstrates, on the basis of affidavits from national security experts, that the remaining information in the report was widely known before publication. And it further demonstrates that publication of the information in the Village Voice did not impair national security.

The Power of Congress to Investigate and the Right of the Press to Publish Are Complementary, Not Antagonistic, Constitutional Doctrines.

By a formal demand that Daniel Schorr reveal the identity of his confidential news source, the Ethics Committee will place in destructive opposition two basic principles of our constitutional structure that should, instead, stand firmly side-by-side: the power of the Congress to investigate and the right of the press to publish.

But these elemental constitutional doctrines are not antagonistic. They are, rather, profoundly complementary. Often in our past the press has brought to public attention facts which became the basis for legislative hearings and legislative action. Often in our past, members of the House of Representatives have given information to the press, with the understanding that their names not be used, so that the information could be broadcast or published to the American People. Often in our past, the full and free flow of information to and from the people and their elected representatives has been possible only because reporters honored promises not to reveal the names of their news sources.

The hearings conducted by the Ethics Committee should not provide the occasion for a great confrontation between the Congress' constitutional power to investigate and the press' constitutional right to publish. In such a confrontation, one side may win a legal victory, after protracted skirmishing in the courts. But if such a confrontation occurs at all the American people will be the ultimate losers. Their freedom depends upon both a Congress with the will and wisdom to use its intimidating investigative power on inquiries of true national import and a press with the energy and resolve to continue the noble experiment of the Framers by publishing in unfettered fashion information about matters of state.

Daniel Schorr May Not Be Punished For Making A
Copy of the Select Committee's Final Report
Available to the Village Voice.

The only purpose of this Committee's present inquiry, which a careful reading of its organizing resolution and the legislative history permit, is to determine what sanctions may be imposed on Mr. Schorr for his role in making a copy of the final report of the Select Committee on Intelligence available to the Village Voice.

No sanctions may be imposed on Mr. Schorr in this regard.

By making the final report available to the Village Voice, Mr. Schorr violated no rule, regulation or resolution of the House of Representatives.

If the House of Representatives were to attempt to punish Mr. Schorr in these circumstances, it would not only do violence to his First Amendment rights. By such action, the House would impose on Mr. Schorr sanctions that would clearly violate the Constitution's prohibition against bills of

attainder (legislative acts that apply to named individuals in such a way as to inflict punishment on them without trial before a court of law) and ex post facto laws (retrospective legislative acts imposing punishments). See, U.S. Constitution, Article I, Section 9, Cl.3.

Joseph A. Califano, Jr.

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BEFORE THE
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT
OF THE HOUSE OF REPRESENTATIVES

In re Hearings Conducted .
Pursuant to House Resolution 1042 .
.....

MEMORANDUM IN SUPPORT OF
DANIEL SCHORR'S CONSTITUTIONAL RIGHT NOT
TO DISCLOSE THE IDENTITY OF HIS CONFIDENTIAL NEWS SOURCE

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September 13, 1976

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INTRODUCTION

The First Amendment of the Constitution goes simply and directly to a central principle of our democratic government and individual freedom: "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."

It is no accident that this is the first amendment.

It is no accident that the prohibition of the First Amendment is explicitly directed at Congress.

Freedom of speech and freedom of the press are the vital core of our constitutional democracy. These freedoms permit and encourage the self-expression, the self-examination and the self-criticism that are essential to our form of self-government. They provide a critical check which ensures that ours is indeed a government of laws, not men. They make possible this nation's great legacy to history -- popular sovereignty.

Freedom of the press is more than the freedom to publish and distribute news. The First Amendment also guarantees the right to gather news, and the corollary right not to disclose the identities of confidential sources who often provide the insight, perspective and criticism which enable the American people to be truly informed. Without confidential sources -- and without constitutional protection for those sources -- the press could become

a subservient mouthpiece of officialdom, reduced to the supine role of printing untested public statements and public handouts.

Invoking the Congress' constitutional power to investigate under Article I of the Constitution, this Committee, on August 26, 1976, issued a sweeping subpoena to Mr. Schorr, commanding him to appear on September 15, 1976 and

"to bring with him all books, records, correspondence, memoranda, papers, documents, writings or other tangible things which relate in any way to the subject matter of our inquiry including all drafts and copies of the reports of the Select Committee on Intelligence which were in existence prior to January 29, 1976, and which are in his custody, control or possession."

This Committee may further demand that Mr. Schorr reveal the identity of the confidential news source who provided him with a copy of the House Select Committee on Intelligence's final report. This report formed the basis for numerous radio and television broadcasts by Mr. Schorr over the Columbia Broadcasting System, and it was subsequently made available for publication in the Village Voice. If the Committee does indeed demand disclosure of a confidential news source, it will threaten Mr. Schorr with a citation for contempt and imprisonment for refusing to answer. But, far more perniciously, the Committee will, in effect, seek to diminish the force of fundamental constitutional guarantees and threaten to stem the full and free flow of information to the American public. For reasons stated below, any such action by this Committee will offend the First Amendment values enshrined in the Constitution.

By such a demand, this Committee will place in destructive opposition two basic principles of our constitutional structure that should, instead, stand firmly side-by-side: the power of Congress to investigate and the right of the press to publish.

But these elemental constitutional doctrines are not antagonistic. They are, instead, obviously and profoundly complementary. Often in our past the press has brought to public attention facts which became the basis for both legislative hearings and legislative action. Often in our past, members of this House have given information to the press, with the understanding that their names not be used, so that such information could be broadcast or published to the American people. Often in our past, the full and free flow of information to and from the people and their elected representatives has been possible only because reporters honored promises not to reveal the names of their news sources.

This hearing should not provide the occasion for a great confrontation between the Congress's constitutional power to investigate and the press's constitutional right to publish. In such a confrontation, one side may ultimately win a technical victory, after protracted skirmishing in the courts. But if such a confrontation occurs, the American people will be the ultimate losers. Our people need both a Congress with the will and wisdom to use its intimidating investigative power on inquiries of true national import and a press with the energy and resolve to continue the noble experiment of the Framers by publishing in unfettered fashion information about matters of state.

Under this historic constitutional experiment with freedom of expression, we submit that Mr. Schorr's news broadcasts on the final report of the House Select Committee on Intelligence are protected by the guarantees of the First Amendment. So too, under the First Amendment, the identity of the news source who provided the information which formed the basis for those news broadcasts should receive constitutional protection. Accordingly, in exercise of his First Amendment rights and in

compliance with the moral dictates of his conscience, Daniel Schorr cannot answer questions designed to elicit the identity of his confidential source, and he cannot provide this Committee with copies of the Select Intelligence Committee final report because the copies in his possession might identify his confidential source.

In assessing Mr. Schorr's legal claim of right, this fact must be kept constantly in view: as evidenced by the timing of his CBS television broadcasts, Mr. Schorr received a copy of the Select Committee report after the Committee had voted on January 23, 1976 to approve and publish the final report and before the full House voted on January 29, 1976 to revoke the power it had originally vested in the Select Committee and to impose additional conditions on the official release of the report.

Thus, at the time that the Select Committee's final report was given to Mr. Schorr, no resolution, rule or regulation of the House prohibited that transfer, either by a Member, an employee of the House, an employee of the Executive Branch or any other person. Put another way, at the time the Select Committee's final report was transferred to Mr. Schorr, no resolution, rule or regulation of the House was violated, either by any possible source or by Mr. Schorr.

Under these circumstances, no legitimate legislative purpose will be served by attempting to force Mr. Schorr to reveal the identity of his source. This Committee simply cannot satisfy basic tests established by the Supreme Court which must be met before a Congressional investigatory body can even consider invading the First Amendment rights of a witness appearing before it:

-- The identity of Mr. Schorr's news source is not substantially relevant to the purpose of this Committee's inquiry;

-- Alternative means of gaining the demanded information have not been exhausted;

-- Under the circumstances of this inquiry, there is no overriding and compelling governmental interest that justifies abridging Mr. Schorr's constitutional right to keep the identity of his source confidential.

The Supreme Court has forcefully stated the basic principle upon which Mr. Schorr relies:

" . . . the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged." Watkins v. United States, 354 U.S. 178, 188 (1957). (Emphasis supplied.)

Daniel Schorr thus respectfully urges this Committee, through undersigned counsel, to recognize that, in the circumstances presented by the matter under investigation, it would serve the interests of neither the Committee nor the House nor the nation as a whole to seek from Mr. Schorr the identity of his confidential source and that any attempt to force him to identify that source violates his First Amendment rights.

I. THE FIRST AMENDMENT'S FREE PRESS GUARANTEE GIVES REPORTERS THE RIGHT TO PROTECT THE IDENTITY OF A CONFIDENTIAL NEWS SOURCE FROM DISCLOSURE.

A. The Core of the First Amendment Right to Freedom of the Press is Reporting on Governmental Affairs

The Supreme Court has consistently recognized that the fundamental concern underlying the First Amendment's protection of "the freedom of . . . the press" is to maintain for the people a full and free flow of information about government so that the citizenry will be well-informed and thereby able to participate meaningfully and intelligently in the political process.^{1/} In Associated Press v. United States, 326 U.S. 1, 20 (1944), the Court observed:

"[The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society."

In Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964), the Court declared:

"Speech concerning public affairs is more than self-expression; it is the essence of self-government."

Not only do journalists have a Constitutional right to publish and to determine what to publish, but, more importantly, the public, the ultimate sovereign in our democracy, has the right under the First Amendment to be informed. See, e.g., Lamont v. Postmaster General, 381 U.S. 301 (1965). James Madison wrote that the historic and fundamental function of the press under the First Amendment is to inform the people so that they may scrutinize the acts of the individual men and women who govern:

^{1/} See e.g., New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); Marsh v. Alabama, 326 U.S. 501, (1946); Schneider v. State, 308 U.S. 147, 161 (1939); De Jonge v. Oregon, 299 U.S. 353, 364 (1937); Grosjean v. American Press Co., 297 U.S. 233, 250 (1936).

"The responsibility of officers of government cannot be secured without a free [press] investigation of their conduct and motives." ^{2/}

The Supreme Court reaffirmed this principle in Mills v. Alabama, 384 U.S. 214, 219 (1966):

"The press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were elected to serve." ^{3/}

The informing function of the press is most critical with respect to international affairs and national defense:

" . . . the only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry -- in an informed and critical public opinion which alone can protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware and free most vitally serves the basic purpose of the First Amendment. For without an informed and free press there cannot be an enlightened people." New York Times Co. v. United States, 403 U.S. 713, 728 (1971) (Stewart, J., concurring).

^{2/} Madison, The Virginia Report of 1799-1800, together with the Virginia Resolution of December 21, 1798, 187 (1850 ed.). See also, Brant, James Madison - Father of the Constitution 1787-1800 (1958).

^{3/} The press "has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences" Estes v. Texas, 391 U.S. 532, 539 (1965).

"In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government." New York Times Co. v. United States, 403 U.S. 703, 717 (1971) (Black, J., concurring). (Emphasis supplied.)

Accordingly, the special protection which the First Amendment gives to the press is "not for the benefit of the press so much as for the benefit of all of us." Time, Inc. v. Hill, 385 U.S. 374, 389 (1967). The protection of the Free Press guarantee is not, that is, for the benefit of Mr. Schorr so much as for the benefit of the American people who are entrusted with the precious but heavy responsibility of self-government.^{4/}

An important analogy to the reporter-source constitutional privilege is found in the Speech or Debate clause which provides that "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other place". Article I, § 6, Cl. 1. The testimonial privilege of the Clause extends to legislative aides when they are conducting legislative business for members. Gravel v. United States, 408 U.S. 606, 616-17 (1972). Neither aide nor member need divulge confidential communications between them or between either one of them and a third party source of information when they are acting within the legislative sphere. So too, members of the executive and members of the judiciary have qualified testimonial privileges about confidential communications relating to their respective governmental spheres of activity. United States v. Nixon, 418 U.S. 683 (1974). Obviously, these testimonial privileges, like the reporter-source privilege, are not for the good of the

^{4/} The First Amendment privilege between a reporter and his source is different than the common law or statutory privilege protecting confidential communications between lawyers and clients, doctors and patients or priests and penitents. The latter are recognized in law so that individuals will advance their personal well-being by entering into specific types of relationships. In the First Amendment area, however, the right of non-disclosure is not predicated upon the well-being of the source or the reporter but rather upon the broad societal interest, protected by the First Amendment, in having citizens fully informed about governmental matters.

individuals so much as for the good of the nation because the privileges facilitate the accomplishment of basic governmental functions.

- B. Under the First Amendment, the Press has a Constitutional Right to Gather News and a Corollary Right to Protect the Identity of a Confidential News Source.

1. The Right To Gather News

The basic free press guarantee is the right to publish and distribute information. Near v. Minnesota, 283 U.S. 697 (1931); Nebraska Press Ass'n v. Stuart, 44 U.S.L.W. 5149 (No. 75-817, June 30, 1976); Marsh v. Alabama, 326 U.S. 501 (1946). This fundamental constitutional right would be meaningless without constitutional protection for the process of gathering the information that is to be published and distributed.

The Framers of the Constitution recognized that the freedom of the press to publish without governmental interference necessarily implies the freedom of the press to gather news. As Madison wrote:

"A popular government without popular information or the means of acquiring it is but a Prologue to a Farce or a Tragedy; or, perhaps, both." 9 Writings of James Madison 103 (Hunt ed. 1919).

In Branzburg v. Hayes, 408 U.S. 665, 681, 707 (1972), the Supreme Court expressly recognized that news gathering by the press has First Amendment protection. The Court stated: "without some protection for seeking out the news, freedom of the press would be eviscerated," 408 U.S. at 681, and emphasized that "news gathering is not without its First Amendment protections." 468 U.S. at 707. Cf. Pell v. Procunier, 417 U.S. 817, 833 (1974). Subsequent court decisions have interpreted Branzburg as establishing the principle that the gathering of news involves rights of constitutional dimension. See, e.g., In re The Washington Post,

No. 76-1695 (4th Cir. July 19, 1976) (Slip Op.); CBS, Inc. v. Young, 522 F.2d 234, 238 (6th Cir. 1975); United States v. Liddy, 478 F.2d 586, 587 (D.C. Cir. 1974); Baker v. F&F Investment Co., 470 F.2d 778 (2nd cir. 1972), cert. denied, 411 U.S. 966 (1973).^{5/}

2. The Right to Maintain the Confidentiality
of a Source Used in News Gathering

The First Amendment right to gather news necessarily implies a First Amendment right to keep confidential the identity of sources used during the news gathering process. As members of this Committee are well aware, unless the press is to be restricted to printing press releases and on-the-record public statements, reporters require informants to develop the news. The promise that names or certain aspects of communications will be maintained in confidence is necessary to the establishment of a news-gathering relationship with many news sources, including members of the United States Congress.

Obviously, if reporters are forced, under pain of contempt and imprisonment, to divulge the names of their confidential sources before Congressional investigatory committees, then many sources of news will dry up and the public dialogue about governmental affairs will be sadly impoverished. This is so even though a reporter's professional ethics require that he or she endure a contempt citation and imprisonment rather than reveal the name of a confidential news source, because compulsory disclosure orders directed at reporters will necessarily frighten news sources

^{5/} Commentators have also read Branzburg as expressly recognizing the constitutional right to gather news. Significant Development, Constitutional Law -- Newsmen's Privilege, 53 B.U.L. Rev. 497, 500 (1973); The Supreme Court, 1971 Term, 86 Harv. L. Rev. 137 (1973); Comment, The Right of the Press to Gather Information After Branzburg and Pell, 124 U. Pa. L. Rev. 166 (1975).

from conveying information. Nationally recognized reporters and experts on government have submitted sworn affidavits in court cases attesting to the deterrent effect compulsory disclosure orders have on the flow of important news.^{6/}

The importance of anonymity to the full and free flow of information to the public has deep and honorable roots in this nation's history. As the Supreme Court noted in Talley v. California, 362 U.S. 60, 64-65 (1960):

"Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind Before the Revolutionary War colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by the English-controlled courts Even the Federalist papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes."

Grand Jury Proceedings. In Branzburg v. Hayes, 408 U.S. 665 (1972), the Supreme Court also expressly recognized the existence of this important corollary to the right to gather news -- the right of a reporter, under the First Amendment, to protect the identity of a confidential news source. To be sure, Justice White, writing for the Branzburg Court, found that, in the particular circumstances presented, the incidental impact on First Amendment rights would be slight because compulsory disclosure in the cases before it would not "threaten the vast bulk of confidential relationships between reporters and their sources." But Justice White's opinion for the Court emphasized the narrowness of the

^{6/} The affidavits of Jack Anderson, Francis Barnard, Robert Dudney, Richard Harwood, Haynes Johnson, Clark Mollenhoff and Richard Neustadt are attached hereto as Appendix B.

point decided:

"The sole issue before us is the obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of crime." 408 U.S. at 682. (emphasis added).

Repeatedly, the Supreme Court stressed that its opinion dealt only with testimony before grand juries, and even then only in cases where the reporter had witnessed the source's illegal conduct or where the source had knowledge of illegal conduct by others.^{7/}

Most importantly, Justice Powell's concurring opinion, which provided the fifth vote in a 5-4 decision and is thus the controlling view of the Court, unequivocally states that the newsman's right to protect a source exists and that the Court's decision in Branzburg is narrow:

"I add this brief statement to emphasize what seems to be the limited nature of the Court's holding. The Court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or in safeguarding their sources

. . . .

" . . . no harassment of newsmen will be tolerated. Indeed if the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicated confidential source relationships without legitimate need of law enforcement, he will have access to

^{7/} Thus, in the recently publicized Farr and Sacramento Bee cases, disclosure was ordered because the record demonstrated that the confidential source had provided a reporter with information in direct violation of a judicial order expressly prohibiting such conduct by the source. Farr v. Pitchess, No. 72-3171 (9th Cir. 1975), cert. denied, 44 U.S.L.W. 3756 (June 29, 1976); Rosato v. Superior Court, 51 Cal. App. 3d 190 (1975), cert. denied, 44 U.S.L.W. 3756 (June 29, 1976).

the court on a motion to quash and an appropriate protective order should be entered. The asserted claim of privilege [to withhold the name of news source] should be judged on its facts by striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions." 408 U.S. at 709-10. (Emphasis supplied.)

Thus, even in the grand jury context, the Supreme Court has clearly recognized that the First Amendment right to gather news includes the reporter's right to protect the identity of a confidential news source and indicated that, under certain circumstances, the reporter's right of non-disclosure will prevail.^{8/}

Other Legal Proceedings. In contexts other than a grand jury investigation, courts have generally recognized that First Amendment interests can outweigh interests in compulsory disclosure and have held that such disclosure of a confidential news source may not constitutionally be compelled.

In Baker v. F&F Investment Co., 470 F.2d 778 (2d Cir. 1972), cert. denied, 411 U.S. 955 (1973), the Second Circuit held that a reporter could not be constitutionally compelled by civil discovery to reveal a confidential source who had informed him of discriminatory practices by sellers of homes in the City of Chicago. In rejecting the attempted discovery, the court assumed the relevancy of the confidential information sought by plaintiffs:

"The [Supreme] Court's concern with the integrity of the grand jury investigating

^{8/} Thus, in a post Branzburg case, the Ninth Circuit Court of Appeals held that in the grand jury context First Amendment interests may outweigh the governmental interest in compulsory disclosure. Bursey v. United States, 466 F.2d 1059 (9th Cir. 1972), rehearing denied, 466 F.2d 1092 (1972).

arm of the criminal justice system distinguishes Branzburg from the case presently before us. If, as Mr. Justice Powell noted in that case, instances will arise in which First Amendment values outweigh the duty of a journalist to testify even in the context of a criminal investigation, surely in civil cases, courts must recognize that the public interest in non-disclosure of journalists' confidential news sources will often be weightier than the private interest in compelling disclosure." 470 F.2d at 784-85.

In Democratic National Committee v. McCord, 357 F. Supp. 1394 (D.D.C. 1973), the court quashed, on First Amendment grounds, subpoenas directed to members of the press. The subpoenas were issued by officials of the Committee to Re-Elect the President et al. in a number of civil suits with the Democratic National Committee which arose as a result of the Watergate break-in. The court discussed at some length Judge Kaufman's opinion in the Baker case, supra, and concluded that the plaintiff had not made the requisite "positive showing of the materiality of the documents and other materials sought by the subpoenas." 357 F. Supp. at 1398.

In Cervantes v. Time, Inc., 464 F.2d 986 (8th Cir. 1972), cert. denied, 409 U.S. 1125 (1973), the mayor of St. Louis brought a libel action alleging that Life Magazine had recklessly and maliciously published a false article stating that the mayor maintained "business and personal ties with the gangsters of his city." 464 F.2d at 988. The mayor sought disclosure of the reporter's sources to ascertain whether his reliance on these sources constituted recklessness. The Eighth Circuit held such discovery improper despite the mayor's contention that disclosure of the reporter's sources was "absolutely essential to the successful outcome of his lawsuit." 464 F.2d at 991. Subsequent to its Branzburg decision, the Supreme Court declined to review

this decision.

In Apicella v. McNeil Laboratories, Inc., Civil No. 74-635 (E.D.N.Y. Feb. 24, 1975), the court refused to order a newspaper to disclose a confidential source, reasoning that "the information sought here is relevant, but not essential to the resolution of the judicial controversy." In Loadholtz v. Fields, Civil No. 74-587 (M.D. Fla., Feb. 7, 1975), the court refused to allow discovery of any material developed in preparation of a newspaper article, even though no confidential news sources were involved. The court reasoned "that the paramount interest served by the unrestricted flow of public information protected by the First Amendment outweighs the subordinate interest served by the liberal discovery provisions embodied in the Federal Rules of Civil Procedure."

In Gilbert v. Allied Chemical Corporation, No. 75-0469-R (E.D. Va. April 6, 1976), a suit for personal damages allegedly suffered as a result of contact with a chemical substance sold under the trade name of Kepone, the court held that journalists could not be constitutionally compelled to disclose this sources of information for news stories discussing Kepone. The court reasoned:

"[T]o effectively gather information for the conveyance of news to the public, it is often necessary for reporters to make assurances either not to identify the source of the information broadcast or published, or to broadcast or publish only part of the information obtained, or both. If a news station or newspaper is forced to reveal the confidences of its reporters, the sources so disclosed, other confidential sources of other reporters, and potential confidential sources will be significantly deterred from furnishing further information to the press. This is information lost to the public; unnecessary impediments to a newsman's ability to gather facts, follow leads, and assimilate sources can restrict the quality of our news as effectively as censorship activities." Slip Op., pp. 4-5.

See also, Brown v. Commonwealth, 214 Va. 755 (1974); State of Vermont v. St. Peter, 315 A. 2d 254 (Vt. 1974).

Compulsory disclosure of a confidential news source at civil trials has been held to be constitutionally permissible only when such disclosure is absolutely essential to the maintenance of a cause of action and the information desired cannot be obtained by any alternative means. For example, in Carey v. Hume, 492 F.2d 531 (D.C. Cir. 1972), cert. denied, 417 U.S. 938 (1974), the court ordered disclosure in a libel action because the allegedly libelous statement was based entirely on confidential sources. However, the court emphasized the narrowness of its decision and stressed that compulsory disclosure of confidential news sources was unconstitutional except in the rare instances when such disclosure is unavoidable in order to make a just adjudication of claims.

Thus, in a variety of proceedings, the courts have recognized, and usually given deference to, the reporter's First Amendment right to protect the identity of a confidential news source.

3. The Justice Department's Recognition of the Reporter's Constitutional Right Not to Disclose the Identity of a News Source

As a matter of departmental policy based on express First Amendment considerations, the Department of Justice has promulgated guidelines regarding the issuance of subpoenas to members of the news media even when confidential sources are not involved. These guidelines were first issued in 1970 by Attorney General John Mitchell. Following the Branzburg decision, Attorney General Elliot Richardson issued revised guidelines which he believed the First Amendment expressly required:

"Because freedom of the press can be no broader than the freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs the reporter's responsibility to cover as broadly as possible controversial public issues." Attorney General Order No. 544-73 (October 26, 1973).

Just a few weeks ago, Attorney General Levi, in a speech delivered on July 28, 1976 before the Ninth Circuit Judicial Conference, stated that the Justice Department guidelines reflected a profound First Amendment concern that the confidential relationship between a reporter and his source be preserved:

" . . . we have given considerable weight to whether the information to be elicited by subpoena was given to the newsman in confidence and whether the newsman would be asked to reveal confidential sources. Though these factors do not appear explicitly in the guidelines, they are, as the Branzburg case makes clear, properly the center of the press' First Amendment concerns."

Attorney General Levi also noted that, in his view, the Justice Department guidelines "call upon the Department itself to strike the balance Justice Powell's opinion in Branzburg discussed," suggesting strongly that the guidelines were thus consonant with Justice Powell's decisive concurrence in that 5-4 decision. The Attorney General noted that the guidelines require:

" . . . that before the issuance of a subpoena to any newsman is authorized, all reasonable efforts to secure the information in question from non-media sources must first be exhausted Subpoenas are issued to newsmen unwilling to appear only when the information sought is essential to the successful conduct of a criminal investigation, and every effort is made to limit the scope of the subpoena to that information which is necessary to verify accuracy of published reports." (Emphasis supplied.)

The guidelines -- which three Attorneys General have embraced -- state that:

"(1) There should be reasonable ground based on information obtained from non-medial sources that a crime has occurred.

"(2) There should be reasonable ground to believe that the information sought is essential to a successful investigation - particularly with reference to directly establishing guilt or innocence. The subpoena should not be used to obtain peripheral, nonessential or speculative information.

"(3) The government should have unsuccessfully attempted to obtain the information from alternative nonmedia sources.

"(4) The use of subpoenas to members of the news media should, except under exigent circumstances, be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

"(5) Even subpoena authorization requests for publicly disclosed information should be treated with care to avoid claims of harassment.

"(6) Subpoenas should, wherever possible, be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of unpublished material. They should give reasonable and timely notice of the demand for documents." 36 C.F.R. § 59.10 (1976).

C. There Are Three Tests That This Committee Must Satisfy Before It Can Even Consider Attempting to Compel Disclosure of a Reporter's Confidential News Source.

Perhaps reflecting the complementary relationship between the press' rights under the First Amendment and the power of the Congress to investigate, in recent years there has been no necessity for the courts to adjudicate a reporter's claim of

privilege before a Congressional investigating committee.^{9/} None-
theless, the proper tests for determining when the reporter has
the right to protect the identity of his source in this context
emerge from three lines of cases:

-- The recent cases involving assertion of the
reporter's privilege in other settings;

-- The cases involving First Amendment claims in
the face of state legislative investigations;

-- The cases involving assertions of First Amendment
rights in the face of Congressional inquiries.

In addition, the Justice Department's policy on subpoenaing re-
porters in the criminal justice context -- initiated by Attorney
General John Mitchell -- can provide guidance to this Committee.

An analysis of these various types of cases and the
Justice Department guidelines indicate that no circumstances are
likely to exist in which a Congressional committee could consti-
tutionally compel a reporter to reveal his confidential source.
But, at the very least, this Committee must satisfy three basic
tests before it could attempt to compel a reporter to reveal the
identity of a confidential source. As the Supreme Court stated
in Sweezy v. New Hampshire, supra, 354 U.S. at 245:

"It is particularly important that the
exercise of the power of compulsory
process be carefully circumscribed when
the investigative process tends to im-
pinge upon such highly sensitive areas
as freedom of speech or press, freedom
of association, and freedom of the com-
munication of ideas." (Emphasis sup-
plied.)

^{9/} In the 19th Century, journalists were expelled from the
House or imprisoned for refusing to testify before congres-
sional committees. See, 2 Hinds' Precedents of the House
of Representatives of the United States § 1632 (1907);
The Washington Star, September 8, 1976, p. 1, col. 1-6.

The basic tests are:

(1) The disclosure of the source must be (a) substantially relevant to (b) a legitimate legislative purpose that is (c) within the jurisdiction of the investigating committee. Watkins v. United States, supra; Barenblatt v. United States, 360 U.S. 109 (1959); Wilkinson v. United States, 365 U.S. 399 (1961); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 546 (1963); DeGregory v. Attorney General of New Hampshire, 383 U.S. 825 (1966); NAACP v. Alabama, 357 U.S. 449 (1958); Sweezy v. New Hampshire, 354 U.S. 234 (1957).

(2) The investigating committee must exhaust alternative, nonmedia sources of information that would be less destructive of First Amendment values before attempting to force a reporter to divulge his confidential source. Shelton v. Tucker, 364 U.S. 479, 488 (1960); Louisiana ex rel Gremillion v. NAACP, 366 U.S. 293, 296-97 (1971). Cf. Justice Department Guidelines, 36 C.F.R. § 59.10.

(3) The investigating committee must demonstrate a compelling and overriding governmental interest in the purpose of the inquiry to justify any limitation or infringement of First Amendment liberties. NAACP v. Button, 371 U.S. 415, 438 (1963); Gibson v. Florida Legislative Investigation Committee, ^{10/}supra, 372 U.S. at 546.

^{10/} See, Comment, The Right of the Press to Gather News After Branzburg and Pell, 124 U. Pa. L. Rev. 166, 180 (1975).

II. UNDER THE TESTS LIMITING CONGRESSIONAL INVESTIGATIONS ESTABLISHED BY THE FIRST AMENDMENT, DANIEL SCHORR'S CONSTITUTIONAL RIGHT TO GATHER NEWS--AND THE CORRELATIVE RIGHT TO PROTECT THE IDENTITY OF HIS NEW SOURCE--CANNOT BE LAWFULLY ABRIDGED BY THE INQUIRIES OF THIS COMMITTEE.

A. The Facts To Which The First Amendment Tests Must Be Applied.

1. Mr. Schorr Acted As A Reporter Exercising First Amendment Rights.

Daniel Schorr's constitutional right not to name the confidential source who provided him with a copy of the final report of the House Select Committee on Intelligence arises from his role as a journalist covering Congressional investigations of this nation's intelligence gathering operations. Schorr, who had broadcast many reports on the activities of the House Select Committee on Intelligence, received a copy of its final report in his capacity as a newsman. After receiving a copy of the report, Schorr televised stories on Sunday, January 26, 1976 (during the 6 p.m. and 11 p.m. CBS news), on Monday, January 26, 1976 (during the CBS morning news and the CBS evening news), and on Wednesday, January 28, 1976 (during the CBS evening news). Mr. Schorr also broadcast several stories on the report over CBS radio on Monday, January 26, 1976.

As a reporter for a major national radio and television network, Mr. Schorr was thus engaged in fulfilling the press' constitutional role of ensuring a full and free flow of information to the public about matters of great national importance. It is beyond question that his broadcasts on January 25, 26 and 28 were constitutionally protected. Similarly, subsequent publication in the Village Voice of the Select Committee's final report made available by Mr. Schorr is also constitutionally protected. See, e.g., New York Times Co. v. United States, 403 U.S. 713 (1971); 122 Cong. Rec. H. 1180 (daily ed. February 19, 1976) (Rep. Stratton).

Accordingly, Mr. Schorr's right to gather news -- which would be violated if he were forced to reveal his news source -- is triggered by his role as a reporter. This right is not only testimonial: it protects Mr. Schorr from producing any documentary evidence -- such as copies of the Select Committee's final report -- which he obtained during news gathering activities and which could lead to the identity of his constitutionally protected confidential source.

2. The Sequence of Key Events

Any assessment of Mr. Schorr's claim of right must begin with an analysis of the sequence of events which resulted in news stories about, and subsequent publication of, the final report of the Select Committee on Intelligence.

House Resolution 591. On July 17, 1975, this resolution established the Select Committee on Intelligence, superseding, although tracking in most particulars, House Resolution 138, 94th Cong. 2nd Sess. (1975). Section 6 of House Resolution 591 gave the Select Committee the authority to determine what matters relating to its investigations could be disclosed to the public.

Draft Report Submitted to Members by Staff. On Monday, January 19, 1976, the staff of the Select Committee on Intelligence circulated to Committee members, and to others, copies of its draft report on the Committee's investigation of U.S. intelligence operations. Hearings on House Resolution 1042 Before the Comm. on Standards of Official Conduct, 94th Cong., 2nd Sess. 17 (1976) (hereinafter "Ethics Hearings") (Mr. Bowers). Throughout the week the Select Committee met "to consider the draft and changes proposed in it by members and Executive Branch agencies." Id. (Mr. Bowers). More than 80 copies of the draft report circulated inside and outside Congress. Id.

Select Committee approval of the Report. On January 23, 1976, the Select Committee on Intelligence, by a bipartisan 9-4 majority; voted to approve the report that had been submitted by the staff and which had been changed during the course of that week. Id. at 18 (Mr. Bowers). See also, Proceedings of the House Select Comm. On Intelligence, 94th Cong., 2nd Sess. 2055 (1976)(hereinafter "Intell. Hearings"); New York Times, January 24, 1976. The staff was to complete approved changes, in collaboration with Rep. Pike and Rep. McClory, and there were also to be additional grammatical and informational changes, apparently of a minor nature. Ethics Hearings at 31 (Mr. Bowers). Some of these changes were completed by late in the day on January 23 or early on January 24. Id. at 18, 32 (Mr. Bowers). A few relatively minor changes were made subsequently. Id. at 32 (Mr. Bowers). House members and staffers had copies of this approved draft after the January 23 vote, and more than 40 copies of the approved draft circulated in the Executive Branch over the weekend. Id. at 37, 52 (Mr. Bowers).

There are two important aspects of the 9-4 vote of the Select Committee on Friday, January 23.

First, the January 23 vote constituted approval of the "final" Select Committee report, despite the understanding that there would be a few more minor changes. Id. at 18, 31-36 (Mr. Bowers), 105 (Mr. Marshall), 399 (Rep. McClory). There was, in other words, a "clear understanding" on January 23rd that "there would be no further votes of the Select Committee prior to the printing and release" of the report, id. at 1030 (Mr. Donner), and that there would be no further negotiations with the Executive regarding its contents. Id. at 477-78 (Mr. Field).

Second, the January 23 vote of the Select Committee was a vote to make public the Select Committee report. As Chairman

Pike stated: "We voted on [January 23rd] to approve and release our report, nine to four." Id. at 125; see also, Mr. Pike's remarks at 91 ("everybody on the committee and everybody on the committee staff believed that it [the final report] was about to be published. . ."), at 106, 109-110 (after final committee approval report could be disclosed at will), at 131 (vote "to publish the report"), and at 142. The ranking Republican member of the Select Committee, Rep. McClory, also viewed the January 23 vote as "approving publication of the report . . .". Id. at 398. Select Committee Staff Director Searle Field stated to this Committee that the January 23 vote was a vote to make the final report public, id. at 477, 529-31, and that the vote constituted a decision not to keep the report "as executive session material any longer."^{11/} Id. at 536-37.

In other words, the 9-4 vote of January 23 approving the final report for publication and removing it from executive session status constituted authorization to disclose the report, pursuant to Section 6 of House Resolution 591, the Select Committee's governing charter.

Schorr Receipt of Report. As evidenced by the timing of his subsequent news broadcasts and by this Committee's own investigation, id. at 36, 57 (Mr. Bowers), Daniel Schorr received a copy of the final report of the select Committee "on or about January 25, 1976", following the Committee's 9-4 vote of January

^{11/} See also, Ethics Hearings at 191 (Rep. Milford: subsequent House action was necessary to reverse Select Committee decision to publish the final report); 293 (Rep. Aspin: voted on January 23rd to release report and make report public); 363 (Rep. Hayes); 410 (Mr. Kirschstein: view of the staff that Committee had voted to make report public); 620 (Rep. Giamo: vote to publish until House vote of January 29, 1976); 1002 (Rep. Stanton: personal view, and his understanding of Committee view, that vote on January 23rd was to make public final report).

23. Id. at 36 (Mr. Bowers). Mr. Schorr's copy of the Select Committee report contained changes "apparently made late on January 23, or possibly even on Saturday, January 24, 1976." Id. at 57 (Mr. Bowers).

Schorr Broadcasts from the Report. On January 25th, January 26th and January 28th, Mr. Schorr broadcast news reports on the Columbia Broadcasting System referring to material contained in the Select Committee's report which had been finally approved for release and publication on January 23rd.

Passage of House Resolution 982. On January 29, 1976 -- six days after the Select Committee had voted to approve its final report and to make it public -- the full House passed House Resolution 982, 94th Cong., 2nd Sess. (1976). This resolution extended the time in which the Select Committee could file its report with the House until January 30, 1976 and directed that the Select Committee

"shall not release any report containing materials, information, data, or subjects that presently bear security classification, unless and until such reports are published with appropriate security markings and distributed only to persons authorized to receive such classified information, or until the report has been certified by the President as not containing information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal Government."

This resolution, in effect, revoked House Resolution 591 and superseded the legally authorized decision made by the Select Committee pursuant to House Resolution 591, approving the final report and authorizing that it be made public. Since the conditions of this resolution have never been met, the final report, which had been approved for publication for six days, has not, in fact, been officially published.

Publication of the Select Committee Report. On February 16 and 23, 1976, the Village Voice published a copy of the Select Committee's final report which Daniel Schorr had received from his news source after the Committee had authorized release of the report on January 23, 1976 but before the full House had passed House Resolution 982 on January 29, 1976.^{12/} Virtually all the material contained in the Village Voice version of the Select Committee's final report had already been widely circulated to the public, and, in the view of defense policy, international affairs and intelligence experts, contained no material that would significantly effect our nation's security. See, Appendix A and

12/ See, Ethics Hearings at 91:

"Mr. Pike. Obviously, at the time that this document got leaked to Dan Schorr, the House had not voted not to publish it, and everybody on the committee and everybody on the committee staff believed that it was about to be published."

"Mr. Marshall. So it is your testimony that the January 23, 1976 draft, that is the final draft, contained no classified information."

"Mr. Pike. It was the judgment of our committee that there was nothing in it that should not be published."

"Mr. Marshall. Was that your judgment as well?"

"Mr. Pike. It was, indeed, I voted with the majority of the committee. The vote was 9 to 4."

"Mr. Marshall. Were there any instructions given to the members or staff on how to prevent disclosure of drafts in their distribution?"

"Mr. Pike. As far as the drafts were concerned, no."

"Mr. Marshall. Have you had an opportunity to examine the Village Voice for February [sic] 16 and 23?"

"Mr. Pike. I have."

"Mr. Marshall, Did this draft contain, or whatever part of that draft, contain classified information?"

"Mr. Pike. It contained, once again nothing which the committee had not voted to publish." (Emphasis supplied.)

pp. 51-53, infra. As Secretary of State Henry Kissinger stated after Village Voice publication, " . . . the essence of the report had leaked before the report was published." The Washington Post, April 8, 1976.

Passage of House Resolution 1042. Three days later, on February 19, 1976, the House passed House Resolution 1042, 94th Cong., 2nd Sess. (1976). That resolution directed the Committee on Standards of Official Conduct to "inquire into the circumstances surrounding the publication of the text and of any part of the report of the Select Committee on Intelligence, and to report back to the House in a timely fashion its findings and recommendations thereon."

* * * * *

From this brief recitation of the key events, one fundamental fact emerges: At the time that Daniel Schorr received a copy of Select Committee's final report, the Select Committee had authorized release of its final report pursuant to House Resolution 591 and the full House had not passed House Resolution 982 establishing that certain conditions be met before the report was officially released.

Thus, as will be discussed more fully below, regardless of whether the news source was in the Legislative Branch, the Executive Branch, or outside the government, the act of giving the report of the Select Committee to Daniel Schorr, subsequent to the Committee's January 23, 1976 vote authorizing release of the report and before passage of House Resolution 982, did not constitute a violation of any resolution, rule or regulation of the House of Representatives or of any of its Committees or Subcommittees.

- B. The Purpose of This Committee's Investigation Is To Determine Whether Sanctions Such As A Contempt of Congress Citation Or Removal Of His Gallery Privileges Should Be Imposed On Daniel Schorr For His Role In Publishing The Select Committee's Report In The Village Voice.

To appreciate the clear validity of Daniel Schorr's First Amendment claim in this situation, it is essential to understand the purposes of this Committee's investigation. Wilkinson v. United States, 365 U.S. 399, 408-09 (1961). Only then can one assess whether Congress is acting with a "valid legislative purpose," id., and whether this purpose constitutes the kind of compelling and overriding interest that might justify a governmental invasion of First Amendment rights. See, pp. 18-21, supra.

The basis for the present inquiry is, of course, found in House Resolution 1042. But the "Resolved" clause of the Resolution does not provide a statement of legislative purpose which informs this Committee's efforts. The "Resolved" clause, instead, merely indicates the area which this Committee is to investigate; it does not explain why the investigation is to be undertaken. Thus, the legislative purpose behind this investigation, if any, is to be found in the "Whereas" clauses of House Resolution 1042 and in the floor debates that preceded its passage.

These clauses and that debate demonstrate that the stark and quite narrow purpose of this investigation is simply to determine whether the House should impose sanctions on Daniel Schorr for his role in facilitating publication of the Select Committee's final report in the Village Voice after the House voted on January 29, 1976 to stop its release.

The "Whereas" Clauses. Four "Whereas" clauses precede the "Resolved" Clause. These provide the authoritative statement of the legislative purpose underlying the resolution, for they are

to the resolution as a preamble or policy section is to a bill. And they explain the basis for a legislative action for purposes of determining the action's constitutionality.^{13/}

The first "whereas" clause recites the fact that the Select Committee report, prepared pursuant to House Resolution 591, appeared in the Village Voice on February 16, 1976.

The second "whereas" clause summarizes House Resolution 982 and the conditions imposed by that resolution on the release of the Select Committee's final report subsequent to the Select Committee's vote to approve and publish that report.

The third "whereas" clause states that Mr. Schorr, as a correspondent for CBS who had access to the Radio and Television Galleries of Congress has "allegedly admitted publicly that he had obtained a copy" of the Select Committee Report and "as a result of his alleged personal disagreement with the action of the House in adopting H. Res. 982, allegedly took actions which resulted in the publication" of the Select Committee report in the Village Voice. (Emphasis supplied.)

The fourth "whereas" clause then makes clear the Congressional purpose:

Whereas it therefore appears that the aforementioned alleged action of the said Daniel Schorr may be in contempt of, or a breach of the privileges of, this House: Now, therefore, be it

"Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to inquire into the circumstances surrounding the publication of the text and any part of the report of the Select Committee on Intelligence, and report

^{13/} See, e.g., 1A C. D. Sands, Sutherland Statutory Construction, §§ 20.03-.05, 20.12-.13, 29.01-.02 (4th ed. 1972). See also, Zinn and Willett, How Our Laws Are Made 7 (15th ed. 1976).

back to the House in a timely fashion its findings and recommendations thereon." (Emphasis supplied.)

The two "therefores" in the fourth "Whereas" clause demonstrate clearly that the purpose of this Committee's inquiry is to investigate the factual question whether Mr. Schorr was in contempt of the House or had breached its privileges by arranging for publication after January 29, 1976 and to make recommendations about what action to take if he were in contempt or had breached the House's privileges. Put another way, this Committee is first to determine whether the facts alleged in the third "Whereas" clause are accurate (i.e. to make "findings") and then, if the facts are as alleged, to determine what action should be taken against Mr. Schorr (i.e. to make "recommendations"). The language of the "Resolved" clause -- e.g. the authority to investigate "the circumstances surrounding the publication" -- must be read in light of the "Whereas" clauses, which are concerned exclusively with possible sanctions against Mr. Schorr for his actions after January 29, 1976.

This conclusion is underlined by the actions of this Committee during these hearings. Despite reports of unauthorized leaks to other journalists and despite the fact that other journalists were given the Select Committee's final report at the same time as Mr. Schorr, the only journalist witnesses this Committee has called or subpoenaed to testify are Mr. Schorr and representatives of the Village Voice.

The Floor Debate. The floor debate on House Resolution 1042, which was held on February 19, 1976, drives home the essential point reflected in the "Whereas" clauses -- the "legislative" purpose of this Committee's investigation is pointedly limited: should the House punish Mr. Schorr for his actions in providing the Village Voice with a copy of the final report prepared by

the Select Committee after the full House had voted on January 29, 1976 to overrule the Select Committee's January 23 decision to publish.

First, Rep. Stratton, the author and chief proponent of the resolution, makes clear that the purpose of the inquiry is to focus on the reasons for publication of the Select Committee report after the House stopped release of the report on January 29, 1976:

"This resolution addresses itself to the problem of the publication of a report of the House Committee on Intelligence after the House had voted better than 2 to 1 on the 29th of January 1976, not to have that report published." 122 Cong. Rec. H 1179 (daily ed. February 19, 1976). (Emphasis supplied.)

Second, Rep. Stratton makes clear as well that the basic question to be considered by this Committee is whether Daniel Schorr engaged in certain acts that resulted in transmittal of the report to the Village Voice and, if so, whether he should be held in contempt or have his privileges as a correspondent removed:

". . . I happen to believe that his [Mr. Schorr's] was a contemptuous action, but this can only be determined for sure when all of the facts have been presented to an appropriate committee of Congress . . .

"Certainly we have here a prima facie case that the privileges of this House have been breached, and the committee should determine what the situation was and should also recommend to the House what action should be taken.

"There are precedents in the House going back all the way to 1790 for the House to exercise contempt action over individuals on the outside . . .

"I am not sure whether this approach is appropriate in this case or not. It should be up to the committee to decide what to recommend. Or it is possible that the committee might recommend, at the very least that in consideration of what would appear to be at least, in common sense language,

a contemptuous action on the part of someone to whom we have extended the facilities of the radio and television gallery, that we should withdraw from him the privileges of membership in that gallery.

"This is what the resolution does." Id.
(Emphasis supplied.)

See also, id., at H 1181 (Rep. Milford).

Third, Rep. Stratton also makes clear that the inquiry is to focus on Mr. Schorr's actions after the passage of House Resolution 982 imposing additional conditions on release of the Select Committee's approved final report and not on Mr. Schorr's actions before January 29, 1976 in obtaining a copy of the report when the Select Committee itself had authorized release of the report and the report was about to be published:

"Actually the press accounts of this Village Voice matter suggest that Mr. Schorr actually obtained the report which he made available to the Village Voice with the understanding that the report was going to be released very shortly by the committee. This is certainly a procedure which is not unknown in the House of Representatives. If we are going to put out a document, especially a long and complicated one, we will often issue it and say "Hold for release" and we may put a particular set of circumstances on, and that gives the newspaper reporter time to read the report and digest the information before the actual release date comes along. It may have been that this was the situation under which an accredited correspondent got the document; and then when the House of course decreed that the document should not be released, it would seem to me the accredited correspondent had a clear-cut obligation to respect that decision, considering the circumstances under which he had gotten the document, and that he had no right either morally

or legally to go out and promote publication."
122 Cong. Rec. H 1180 (daily ed. February 19,
1976). (Emphasis supplied.) 14/

The unmistakable import of these comments by Rep. Stratton is that this Committee's purpose is not to explore the circumstances surrounding Mr. Schorr's receipt of the report, if he obtained the report before January 29, 1976, as this Committee's investigator states he did. See p. 22, supra.

These three points from the debates, which correspond to the "Whereas" clauses, are underlined by a colloquy between Rep. Stratton and Rep. Eckhardt. Rep. Eckhardt asks Rep. Stratton why the "Whereas" clauses are necessary, and Rep. Stratton replies:

"The whereas clauses simply try to set forth as clearly as it is possible to do the circumstances out of which the resolution itself emerges. No member can vote on this without having some understanding of the circumstances. The circumstances involve the action which the House took, the circumstances involve the action which the Village Voice took, the circumstances involve the declaration of Mr. Schorr, and then finally it is important to demonstrate that these various facts bear directly on the privileges of the House. So that is what the whereas clauses contain." Id., at H 1182.
(Emphasis supplied.)

Chairman Flynt made the same fundamental point in his statement opening this Committee's hearings: "In response to this apparent violation of House Resolution 982, the House of Representatives,

14/ Elsewhere in the floor discussion, Rep. Stratton does suggest that this Committee could inquire into Mr. Schorr's news source. See, e.g., 122 Cong. Rec. H 1179 (daily ed. February 19, 1976). But, in light of all the other statements made by Rep. Stratton, including the one quoted immediately above, and in light of the "Whereas" clauses, Rep. Stratton was obviously concerned with the possibility that Mr. Schorr's source may have provided him with the full final report after January 29, 1976. Although Mr. Schorr had obviously broadcast news reports before the House vote on January 29, 1976, it may not have been clear to Rep. Stratton, as it is clear to this Committee's investigators, that, at the time Rep. Stratton proposed House Resolution 1042, Mr. Schorr had received the full copy of the final report before January 29.

on February 19, 1976, adopted House Resolution 1042"

Ethics Hearings at 6. (Emphasis supplied.)

Accordingly, both the wording of the "Whereas" clauses themselves and the floor debates show the basic factual context and the basic issues which constitute the purpose of this Committee's inquiry, viz, Mr. Schorr's role in transmitting the Select Committee report to the Village Voice after January 29, 1976 and the sanctions, if any, which the House should impose upon Mr. Schorr if his role after that date was as alleged in the "Whereas" clauses. As the Supreme Court has stated in Watkins v. United States, 354 U.S. 178, 201 (1957):

"It is the responsibility of the Congress . . . to insure that compulsory process issued only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out the group's jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the authorizing resolution."

And the Supreme Court has further ruled that, when First Amendment rights are at stake, resolutions authorizing Congressional investigations shall be narrowly construed to avoid constitutional questions. United States v. Rumely, 345 U.S. 41, 46-48 (1953).

C. Disclosure of Mr. Schorr's News Source Is Not Substantially Relevant To Any Legitimate Legislative Purpose.

1. Disclosure of a Confidential News Source Is Not Relevant to the Legislative Purpose of Determining What Sanctions to Impose on Mr. Schorr.

First, with respect to this Committee's mandate to investigate factual allegations contained in the "Whereas" clauses of House Resolution 1042, Mr. Schorr is willing to testify. He is willing to testify about non-privileged events, following his broadcasts for CBS on January 25, 26, and 28, 1976, which culminated in the publication of the Select Committee's report in the

Village Voice on February 16, 1976. Mr. Schorr will confirm that he initiated efforts to publish his copy of the Select Committee's final report after January 29, 1976 and that his discussions with a representative of publisher Clay Felker resulted in the appearance of the Select Committee's final report in the Village Voice. In short, Mr. Schorr is willing to testify about the factual circumstances which gave rise to the passage of the Resolution authorizing this Committee's present investigation. Those factual circumstances -- as set forth in the "Whereas" clauses and floor debates -- do not, however, encompass, or require, disclosure of the name of the source from whom he obtained a full copy of the Select Committee's final report before January 29, 1976, or disclosure of any information leading to the identity of the source.

Second, with respect to this Committee's mandate to make recommendations regarding the sanctions that should be imposed on Mr. Schorr for his attempt to have the Select Committee report published despite passage of House Resolution 982, disclosure of his source is not substantially relevant to that purpose of this Committee's inquiry either. The authorizing resolution was concerned with the sanctions that should be imposed because Mr. Schorr had allegedly acted counter to House Resolution 982. This decision of Mr. Schorr's was made after January 29, 1976, the date House Resolution 982 was passed. Accordingly, the acts for which Mr. Schorr might be subject to House sanctions, upon recommendation of this Committee, were his efforts -- after January 29 -- to arrange publication of the final Select Committee report, not his receipt of the report from his news source before January 29 and after the Select Committee had authorized publication of the report. Disclosure of his source is thus demonstrably not relevant to this Committee's decision whether to recommend sanctions against Mr. Schorr for his actions, after January 29, 1976,

in seeking publication of the Select Committee report.

Third, disclosure of Mr. Schorr's source is not substantially relevant to a legitimate legislative purpose because it is not lawful for the House either to hold Mr. Schorr in contempt or to remove his gallery privileges for his role in publishing the Select Committee report. As a general matter, the House's inherent power to punish contempts at the bar of the House has been limited in modern times to sanctions against contumacious witnesses.^{15/} Obviously, Mr. Schorr's role in arranging for publication after January 29, 1976 does not involve his testimony before the House or its Committees. Moreover, Mr. Schorr manifestly did not, as a matter of elementary due process, violate House Resolution 982 because that resolution, by its terms, only directed that the Select Committee not release its report until certain conditions were met; the Resolution clearly did not apply to third parties and, thus, it in no way bound Mr. Schorr.^{16/} Finally, Mr. Schorr has violated no other rule, regulation or resolution of the House of Representatives.^{17/}

^{15/} Cf. Marshall v. Gordon, 243 U.S. 521 (1917).

^{16/} See, e.g., Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

^{17/} The rules and regulations of the Select Committee on Intelligence apply only to members and employees of the House of Representatives. Similarly, Mr. Schorr has not violated any press gallery rules.

As Rep. Milford has stated to this Committee:

"Mr. Schorr had violated no law in obtaining and causing the report to be published. As far as I can determine, he or any other American citizen may seek out any report or data from the House of Representatives -- whether confidential or not -- and could promptly publish it without any type of violation of law." Ethics Hearings at 168.

To the extent that this Committee's purpose was to recommend that Mr. Schorr be cited for contempt or that his gallery or other privileges be revoked or that any other sanction be imposed upon him, that purpose is not legitimate because the House, in our democracy, may not lawfully punish Daniel Schorr in these circumstances without offending the constitutional prohibition against bills of attainder and ex post facto laws.^{18/} Since the ultimate legislative purpose of House Resolution 1042 is to make recommendations regarding the sanctions to be imposed on Mr. Schorr and since no sanctions can lawfully be imposed on Mr. Schorr by the House, there is no legitimate legislative purpose for this Committee's present inquiry. A fortiori, disclosure of Mr. Schorr's news source is not relevant to a legitimate legislative purpose.

2. Disclosure of Mr. Schorr's Confidential News Source Is Not Relevant To Any Broader Legislative Purpose.

According to Chairman Flynt's statement opening these hearings, this Committee's inquiries are animated by broader purposes than those outlined above. A first broader purpose of this Committee's inquiry advanced by Chairman Flynt was that

"...the House must consider whether new legislation is needed or the Rules of the House should be amended to insure that the House can account for and safeguard the security of classified

^{18/} Any punishment of Mr. Schorr when he has not contravened any rule or regulation or resolution of this House would be unconstitutional under the prohibition contained in Article I, Section 9, Clause 3 against bills of attainder and ex post facto laws. The former are all legislative acts that apply to named individuals in such a way as to inflict punishment on them without a judicial trial and the latter are retrospective legislative acts imposing punishments. See, e.g., United States v. Brown, 381 U.S. 437, 447 (Article I, § 9, Cl. 3 prohibition against bills of attainder to be read broadly as bar against "legislative punishment, of any form or severity, of specifically designated persons or groups.").

information which comes into its possession. This requires inquiry into the rules and procedures adopted by the Select Committee on Intelligence for safeguarding classified information and evaluation of the effectiveness of these rules and procedures." Ethics Hearings at 8-9.

A second broader purpose suggested by Chairman Flynt was that

"... the House of Representatives must consider whether new legislation is needed or whether the Rules of the House should be amended to define and set out standards and conditions for the handling and filing of House Committee reports containing classified information. In these hearings, this Committee will seek to develop whether the circumstances surrounding the publication of the text or of any part of the report of the Select Committee on Intelligence demonstrate a need for such legislation or Amendment to Rules of the House." Id.

Finally, Chairman Flynt suggested that a third broader purpose of these hearings was to determine whether any Members, officers or employees of the House should be disciplined as a result of the publication of the Select Committee's final report in the Village Voice.

In view of the analysis above, we submit that these broader purposes of this Committee's inquiry are not supported by House Resolution 1042 and by the legislative history of that resolution.

Nonetheless, even assuming for the sake of argument that these broader purposes could legitimately guide this Committee's investigative efforts, disclosure of Mr. Schorr's source is not substantially relevant to their accomplishment. At the time the Select Committee's final report was given to Mr. Schorr, the Select Committee had approved it and authorized its publication, and the full House had not directed that release of the report be stayed. Given these fundamental facts, the news source's action, whether the source was in the Legislative branch, the Executive

Branch, or outside the government, did not violate House Resolution 591, the Select Committee's security rules, or its employee's security contract.

Section 6(a) of House Resolution 591, establishing the Select Committee on Intelligence, set the conditions under which information regarding its inquiry into this nation's intelligence gathering activities would be released. That section lodged discretion over release of material gathered or prepared by the Select Committee solely in the Select Committee itself with no opportunity for review by the full House before release.^{19/}

Section 6(a) of House Resolution 591 provides:

"Sec. 6(a) The select committee shall institute and carry out such rules and procedures as it may deem necessary to prevent (1) the disclosure, outside the select committee, of any information relating to the activities of the Central Intelligence Agency or any other department or agency of the Federal Government engaged in intelligence activities, obtained by the select committee during the course of its study and investigation, not authorized by the select committee to be disclosed; and (2) the disclosure, outside the select committee, of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries or any other department or agency of the Federal Government." (Emphasis supplied.)

^{19/} The legislative history of Section 6 makes absolutely clear that total discretion over the handling and release of materials was to be lodged in the Select Committee itself. See, 1st Cong. Rec. H 873, 880 (Rep. Anderson), 876 (Rep. McClory).

As Rep. Anderson makes clear, Section 6 was drawn directly from the Senate Resolution establishing a comparable Senate Select Committee to investigate United States intelligence activities. The Senate debate on the equivalent of Section 6 underscores that discretion over disclosure of materials was to reside solely in the select committee studying intelligence. 121 Cong. Rec. S 971 (daily ed. January 27, 1975).

On January 23, 1976, the Select Committee on Intelligence voted to approve the final report of its investigation into U.S. intelligence operations. As noted above, see, pp. 21-27, supra, this vote was:

- a vote to publish the report;
- a vote to release the report;
- a vote to remove the report from executive session status; 20/ and
- a vote which meant there would be no more votes by the Select Committee on the final report and which meant there would be no further negotiations with the Executive Branch about the report's contents.

In short, this was a vote, complying with the requirements of Section 6(a) of House Resolution 591, "authorizing disclosure" of the approved final report.^{21/} This critical fact is underscored by the debates surrounding passage of House Resolution 982. The debates never question that the Select Committee had the power to

20/ House Rule XI, Section 2(k)(7) provides that: "No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee."

21/ Section 6(a) does not condition disclosure of sensitive information by the Select Committee on the precise act of actually filing the final report with the clerk of the House. Nor does Section 6(a) condition disclosure of sensitive material on actual disclosure by the Committee itself, but rather conditions disclosure on Select Committee authorization "to be disclosed."

The Senate debates on the cognate provision in the Senate resolution establishing a select committee on intelligence, see, note 19, supra, which provided the model for Section 6 of House Resolution 591, indicate clearly that the key phrase -- not "authorized by the select committee to be disclosed" -- was to be read quite broadly. The original phrasing proposed by Senator Stennis was: not specifically authorized to be disclosed. But the word "specifically" was expressly dropped at the behest of a sponsor of the Senate Resolution, Senate Pastore, who objected to its use: "In other words, I do not want the committee to sit down and begin to write a bill of particulars every time they are going to authorize some disclosure." 121 Cong. Rec. S 971 (daily ed. January 27, 1975).

authorize disclosure of its final report, or that this authority had been exercised on January 23. Rather the debates focused on whether the whole House should substitute its judgment for that of the Committee regarding the nature of the Committee's agreement with President Ford and the impact of the final report on this nation's intelligence gathering capabilities. See, 122 Cong. Rec. H 289-302 (daily ed. January 26, 1976); 122 Cong. Rec. H 319-20 (daily ed. January 27, 1976); 122 Cong. Rec. H 505-14 (daily ed. January 29, 1976).

Thus, whether the news source was in the Executive Branch, the Legislative Branch or outside the government, the act of giving the final report of the Select Committee to Daniel Schorr after the January 23 vote did not constitute a violation of House Resolution 591.

Similarly, whether the news source was in the Executive branch, the Legislative branch or outside the government, the act of giving Daniel Schorr a copy of the Select Committee on Intelligence's final report between January 23 and January 29 did not constitute a violation of the Select Committee's security rules and

regulations,^{22/} or the Select Committee's employee contract.^{23/}

Moreover, neither the act of giving Daniel Schorr the final report -- nor his actions in arranging for its publication -- contravene Article I, § 5 of the Constitution which provides that "Each House shall keep a Journal of its proceedings and from time to time publish same, except such parts as may in their Judgment require Secrecy." First, committee reports are not part of the Journal until actually delivered to the desk of the Clerk of the House. 4 Hinds' Precedents of the House of Representatives of the United States § 2727 (1907); W. H. Brown, Constitution, Jefferson's Manual and Rules of the House of Representatives, §§ 418, 422, 743 (1975). Obviously, since Daniel Schorr received his copy of the Select Committee's final report before that report was formally filed with the Clerk of the House and since, in fact, the final report has never been filed with the

^{22/} Rule 7.1 of the Rules and Security Regulations of the Select Committee on Intelligence provide that: "No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee." As has been noted, the vote on January 23 by the Select Committee removed the final report from executive session status.

Similarly Rule 7.3 refers to "classified or other sensitive information" in the committee records or files and prohibits disclosure until such time as the committee has submitted its final report to the House or except as may be otherwise determined by the committee. Not only was the final report determined to be published on January 23, 1976, but, in the view of the majority of the Select Committee there was no classified or sensitive information contained in the report.

^{23/} The Select Committee's employment agreement basically tracked the language of Rule 7.3 quoted in the footnote immediately above and applied to unauthorized disclosure of "work product or memoranda of the Committee or any material of testimony received or obtained" during the course of the Committee's work, "unless specifically authorized by the Committee." Again, the Select Committee authorized the final report for publication and release, and, in any event, this provision of the employee agreement does not cover the final report itself but rather covers those materials used in the preparation of the final report.

Clerk, Article I, § 5 does not remotely apply to the Mr. Schorr or to his news source. Second, even if the final report was considered part of the Journal at the time Mr. Schorr received it, the Journal is presumed to be public. The Journal is, in fact, public unless the House expressly votes to make certain sections secret.^{24/}

Of course if the report had been given to Mr. Schorr by a member or employee of Congress after January 29, then that release of the report would have contravened the terms of House Resolution 982. But such was not the case because Mr. Schorr, as noted, received the report between January 23 and January 29, 1976.

Because the act of giving Daniel Schorr a copy of the final report of the Select Committee on Intelligence after the January 23 vote of the Committee and before the passage of House Resolution 982 did not contravene any resolution, rule or regulation of the House of Representatives or its Committees, the disclosure of Daniel Schorr's news source is not substantially relevant to any of the broader legislative purposes asserted by Chairman Flynt in his opening remarks.

First, the identity of the source is not substantially relevant to an inquiry into the rules and procedures established by the Select Committee for safeguarding classified information. Not only did a majority of the Select Committee think that there was no classified information in the final report (i.e., no information that they should not have de-classified), but the act of giving the report to Mr. Schorr, even if we assume for the sake of argument that the act was performed by a Member or House

^{24/} The "object of the whole clause is to insure publicity to the proceedings of the legislature . . ." Field v. Clark, 143 U.S. 649, 670-71 (1892). See also, 1 Elliot's Debates 83 (1941); 2 Elliot's Debates 403 (1941).

employee, did not violate any of the Select Committee's rules or procedures. Thus, if this Committee seeks to recommend new rules and procedures for the handling of classified information, it need only look at the formal rules adopted by the Select Committee and understand that they did not cover the hiatus period between the time that the Committee approved the final report for publication and the time when the printed copy of the final report would be formally filed with the clerk of the House.

Second, the name of the source is not substantially relevant to an inquiry into the "standards and conditions for the handling and filing" of committee reports containing classified information. The major issues raised by the Select Committee practices -- whether a Congressional Committee can "de-classify" information and whether the full House should retain the ultimate decision about publicly releasing a sensitive committee report -- do not remotely require the name of Mr. Schorr's source for their resolution. Indeed, one need go no further than change the language of House Resolution 591 which allowed disclosure after authorization to be disclosed and, in the future, allow disclosure of sensitive materials only after actual Committee disclosure or after formal filing of a final Committee report with the clerk of the House.

Third, as no rule, regulation or resolution of the House was violated by the act of giving Daniel Schorr a copy of the final report of the Select Committee, the name of the news source, again even if we assume a congressional source for purposes of discussion, is not relevant to the purpose of disciplining members or employees. There can be no discipline where there is no violation of rule, regulation or resolution.

* * * * *

The only legislative purpose in seeking the name of Mr. Schorr's news source is merely exposure "for exposure's sake." It would be intriguing for all of us to know who Mr. Schorr's source is, just as it would be intriguing to learn the identity of "Deep Throat", but "exposure for exposure's sake" has been expressly and sternly ruled illegitimate by the Supreme Court. Watkins v. United States, 354 U.S. 178, 200 (1957).

The situation presented by Mr. Schorr's contact with his news source is manifestly different than the cases presented in Branzburg v. Hayes, supra, where, as the Supreme Court emphasized, a reporter's source was either engaged in criminal conduct or had information suggesting illegal conduct by others. Here, as has been demonstrated, the source, acting after the Select Committee had voted to publish its final report on intelligence operations, had neither engaged in illegal conduct nor had knowledge of illegal conduct by others.

- D. Mr. Schorr May Not Be Compelled to Reveal His Confidential News Source Because This Committee Has Not Exhausted Nonmedia Alternatives in Seeking the Source's Identity.

As noted above, it is a basic rule of First Amendment law that even though a governmental purpose be legitimate and substantial that purpose cannot be pursued by means that broadly stifle rights of free speech and free press when the end can be more narrowly achieved. The breadth of governmental abridgement must be viewed in light of less drastic means for achieving

the same basic purpose. See, pp. 16-21, supra.^{25/} In the context of prosecutorial intrusion into a confidential relationship between reporters and their sources, Attorney General Levi has emphasized that ". . . before the issuance of a subpoena to any newsman is authorized [by the Attorney General] all reasonable efforts to secure the information in question from non-media sources must first be exhausted." See, pp. 16-17, supra. And the Justice Department Guidelines require that, before a reporter may be subpoenaed, let alone before prosecutors may inquire into confidential reporter -- source communications, the "government should have unsuccessfully attempted to obtain the information from alternative non-media sources." 36 C.F.R. § 59.10 (1976). Surely the rules established because of express First Amendment considerations by the Department of Justice in the investigation and prosecution of crime should be a model for the Committee and the House if legislative investigators threaten to intrude on a confidential reporter-source relationship.

The purpose of this "least restrictive alternative" requirement is an eminently sensible one. It provides a method for accommodating two important and legitimate interests without derogating either. In the context of this Committee's investigation, for example, requiring that alternative non-media sources of information be exhausted before even considering whether to require compelled disclosure of a confidential news informant allows

^{25/} The importance of seeking alternative methods of accomplishing legitimate governmental purposes, rather than seeking those purposes by action that would invade First Amendment rights of the press, has recently been given unequivocal affirmation by the Supreme Court. In Nebraska Press Association v. Stuart 44 U.S.L.W. 5149 (No. 75-817, June 30, 1976), the Court struck down a direct restraint on the press imposed by a state judge during pretrial proceedings, in part because the judge had not even considered less drastic means of accomplishing the objective of giving the accused a fair trial by an impartial jury.

this Committee to obtain needed information while at the same time avoiding any unnecessary intrusion upon vital First Amendment rights.

This Committee has manifestly failed to satisfy this basic requirement which seeks to reconcile the legitimate investigative needs of Congress and the basic First Amendment rights of the press.

First, this Committee's investigative staff interviewed approximately 105 Members and employees of the House of Representatives. Ethics Hearings at 20 (Mr. Bowers). But, although all Members of the Select Committee on Intelligence have been called before this Committee, put under oath, and asked if they were the source of Daniel Schorr's information, a number of House employees who would have had access to the Select Committee's final report have not been called to testify under oath about whether they were the source of Mr. Schorr's information, or whether they knew who the source was.^{26/}

Second, this Committee's investigative staff interviewed approximately 240 officials and employees of the Executive Branch on a voluntary basis. Id. (Mr. Bowers). Only four executive branch employees have been called before this Committee in public session (Messrs. Rogovin, Bolten, Gregg, and Saunders).^{27/} Obviously, literally hundreds of Executive Branch employees have not been called to testify before this Committee, put under oath,

^{26/} All interviews by this Committee's investigative staff were voluntary. Ethics Hearings at 21 (Mr. Bowers).

^{27/} Mr. Bowers has informed undersigned counsel, by a telephone conversation on September 9, 1976, to one of counsel's secretaries, that Martin Packman, Deputy Director for Research, Bureau of Intelligence and Research, Department of State testified in executive session before this Committee on July 27, 1976. This fact is not, however, reflected in the public record of that date.

and asked if they were the source of Mr. Schorr's information or if they knew who the source was.

Third, with respect to the final report of the Select Committee, approved on January 23, 1976, this Committee's investigative staff found that 40 copies of this draft existed in the Executive Branch on the weekend of January 24-25, 1976, id., at 37 (Mr. Bowers), and that Mr. Rogovin himself had 30 copies of the final report made, presumably on Saturday, January 24, 1976, and distributed widely. Id. at 52 (Mr. Bowers).^{28/} Yet, once again, this Committee has not subpoenaed those persons who would have had contact with those copies of the Select Committee's final report, and asked them, under oath, whether they were the source of Mr. Schorr's information or if they knew who the source was.

Accordingly, this Committee has hardly exhausted alternative sources of information which could provide it with the name of the individual who transferred a copy of the Select Committee's final report to Mr. Schorr. Under these circumstances, the Constitution protects the name of Daniel Schorr's confidential news source.

- E. No Compelling and Overriding Governmental Interest Justifies an Invasion of First Amendment Rights Especially Since the Material Published in the Village Voice Had Already Been Publicly Disclosed And Would Not Endanger National Security.

Given the lack of substantial relevance between the disclosure of Mr. Schorr's news source and the purposes of this Committee's present inquiry, and given the failure of this Committee to exhaust alternative non-media sources for the informant's

^{28/} See also, 122 Cong. Rec. H 320 (daily ed. January 27, 1976); 122 Cong. Rec. H 506 (daily ed. January 29, 1976); 122 Cong. Rec. H 1184 (daily ed. February 19, 1976); Intell. Hearings at 2047.

identity, it is not necessary to reach the third test which must be satisfied before this Committee can even consider attempting to compel Mr. Schorr to disclose his confidential news source: whether there is an overriding and compelling governmental interest that justifies such an invasion of First Amendment rights. See, pp. 18-21, supra.

Nonetheless, even under that test, Mr. Schorr cannot be constitutionally required to reveal the name of his news source without doing violence to First Amendment rights.

(1) If this Committee's legislative purpose is merely to make factual findings regarding the circumstances surrounding the publication of the Select Committee's final report in the Village Voice in order affirmatively to demonstrate the accuracy of House Resolution 1042's "Whereas" clauses, then that purpose is hardly weighty enough to justify an abridgement of First Amendment right, especially since Mr. Schorr is willing to testify about his actions in arranging for publication after the passage of House Resolution 982.

(2) If the purpose of this Committee's inquiry is to recommend whether or not to impose sanctions on Daniel Schorr as a result of his role in the Village Voice publication, then that purpose is of no weight because it is simply not legitimate for the House to punish Mr. Schorr when he has violated no House resolution, rule or regulation of the House. See pp. 34-37, supra.

(3) If the purpose of this Committee's inquiry is to recommend whether or not to impose sanctions on the source -- even if we assume for the sake of argument that the source is a House member or employee -- then that purpose is of no weight because it is not legitimate to discipline the source when at the time the Select Committee's final report was given to Mr. Schorr the Select Committee had approved it for publication, and

the report was about to be released. See, p. 23, supra, and 122 Cong. Rec. H. 1180 (daily ed. February 19, 1976) (Rep. Stratton). As noted, the source violated no House resolution, rule or regulation.

(4) If the purpose of this Committee's inquiry is to consider changes in Committees' handling of classified information or the manner of filing final Committee reports containing classified information -- a purpose which is not, it should be emphasized, mandated by House Resolution 1042 and which, we submit, is not a purpose upon which this Committee can rest its investigation -- then this purpose, which is admittedly one of some weight, should still not override the First Amendment values at issue here because of the unusual circumstances surrounding publication of the Select Committee report.

First, resolution of any problems regarding the Select Committee's handling of classified information generally does not override the First Amendment interests at stake here because the events which this Committee is to investigate do not involve the handling of classified information per se but rather the handling of a final report containing allegedly classified information.

Second, with respect to the presence of classified information in a final report, a majority of the Select Committee did not believe that the report which was approved for publication on January 23rd contained information that should have been classified. Ethics Hearings at 104, 106 (Rep. Pike). And, of course, the final report approved on January 23rd contained no classification markings. Id. at 24 (Mr. Bowers). Resolution of the problems regarding final Committee reports presented by these circumstances -- whether Committees of Congress have the power effectively to "de-classify" information classified by the Executive and whether final reports should contain security

markings -- does not override the constitutional right to protect the identity of a news source. Given the plethora of testimony already received by this Committee on these matters and given the general nature of these problems, this Committee's interest in obtaining the name of Mr. Schorr's confidential news source for this purpose does not remotely outweigh the First Amendment values in issue.

Third, the governmental interest in inquiring into and resolving the problem created by the hiatus between committee approval of a final report containing sensitive information and the actual filing of that report with the clerk of the House also does not override Mr. Schorr's constitutional right, since the name of Mr. Schorr's source is not important for the purpose of solving this problem. The problem, if it is that, was caused by the express structure of House resolutions and rules and by the explicit committee action authorizing the final report to be published. A decision about whether House committees rather than the House as a whole should have total discretion over the release of sensitive committee reports does not constitute a compelling reason for forcing disclosure of the source in these circumstances.

Finally, and perhaps most importantly, there is no overriding and compelling governmental interest which justifies an infringement of First Amendment rights because there was no material contained in the report published in the Village Voice (a) which was not already in the public domain or (b) which would impair national security. A basic factual predicate for this Committee's broader investigation is that the Village Voice contained classified information which was both secret and harmful to national security. But the information was neither.

This fundamental point is demonstrated by Appendix A to this Memorandum. Appendix A includes a "red-lined" copy of the

version of the Select Committee's final report actually published in the Village Voice. News reports or analysis relating just to the House Select Committee's investigations that had appeared publicly either in the New York Times or in the Washington Post or on CBS news broadcasts or in the public hearings of the Select Committee itself is boxed and crossed out in red. See, Appendix A (Affidavit of Deborah Leff). This previously published or broadcast material constitutes an enormous portion of the Village Voice version of the Select Committee's final report. Moreover, with respect to all other material contained in the Village Voice version of the Select Committee final report, two noted experts in intelligence operations, defense policy and national security policy -- Herbert Scoville and Morton Halperin^{29/} -- have executed sworn statements to the effect that the remainder of the Village Voice material not published or broadcast by the Times, the Post, CBS or the Select Committee itself was a matter of public record or would have been common knowledge either to the public generally or to those versed in national security affairs. Moreover, these experts further attest to the fact that, in their judgment, the Select Committee's final report -- as published in the Village Voice -- would not impair national security. See, Appendix A (Affidavits of Herbert Scoville and Morton Halperin).

^{29/} Mr. Scoville was Assistant Director of the Arms Control and Disarmament Agency from 1963-69 and before that was Deputy Director for Research of the Central Intelligence Agency.

Mr. Halperin was formerly a Senior Staff member of the National Security Council, with special responsibility for NCS planning, and has also served as Deputy Assistant Secretary of Defense (International Security Affairs).

The statements of Mr. Scoville and Mr. Halperin are found in Appendix A, attached hereto.

Accordingly, the basic factual predicate for this Committee's broader inquiries is not present. This point is not rebutted merely by stating that the Executive Branch had technically classified some of the information contained in the final report and published in the Village Voice, because Courts have recognized that one must look behind the words "classified" to the substance of that claim when First Amendment rights are at stake, as indeed the Supreme Court did when presented with the Pentagon Papers controversy. See, New York Times Co. v. United States, 403 U.S. 713, 714 (1971).^{30/}

Thus, for all the reasons stated above, we respectfully submit that this Committee cannot satisfy the third test which must be met before a reporter can lawfully be compelled to disclose the identity of a confidential news source.

F. Policy Reasons Also Counsel Against Seeking to Force Mr. Schorr to Disclose the Identity of His Source.

Not only is there no legal justification for invading the First Amendment rights of the press in the circumstances presented but there are strong policy reasons which dictate that this Committee should not attempt to compel the forced disclosure of Mr. Schorr's news source. These reasons should serve to counter the initial anger of certain members who felt that Mr. Schorr

^{30/} The power to classify documents "is an awesome responsibility, requiring judgment and wisdom of a high order. I should suppose that moral, political, and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained." New York Times Co., supra, 403 U.S. at 729 (Stewart, J., concurring) (emphasis supplied).

had acted improperly by seeking publication of the Select Committee report after passage of House Resolution 982 on January 29, 1976.

First, if the full House wishes to make the final decision about the public release of the report of an intelligence oversight committee or the problems of "legislative de-classification", then it should ensure that it retains that decision for itself in the resolution or rule establishing the intelligence oversight committee. Once the Select Committee had authorized disclosure of the report and once Mr. Schorr had obtained a copy of the report following such authorization, then it was clearly his obligation as a journalist to ensure that the report reached the American people. This obligation was not reduced by the House action of January 29, 1976 which did not legally bind Mr. Schorr in any way. If the full House had wanted to exercise final review over the Select Committee report before it was made public, the time to ensure such review was when House Resolution 591 was passed, not when House Resolution 982 was approved.

Second, in the congressional context, the reporter-source relationship exists everywhere. The press serves as a link between a Member and his constituents -- digesting and disseminating information on a daily basis. Most commonly, the Member gives a reporter a press release or holds a press conference. The press transmits this information to constituents and the "informing function" of Congress is aided. Yet, the reporter-Member relationship is not always open and public. Members frequently give reporters information on an "off the record" basis or with the promise of confidentiality. The reporter has a story; the public has information. But, the Member, for whatever reason, remains in the background. He may wish that an opinion be circulated in the public domain but not want to be identified as the

opinion maker. He may want the public to know a fact, but he may consider the fact self-serving. He may want to criticize, but he may -- for whatever reason -- not want the criticism to be traced to him.

This relationship is a central fact of congressional life. Members routinely use reporters for their personal or political benefit, and the public is the ultimate beneficiary. See Appendix B (Affidavit of Richard Neustadt). Any forced disclosure of a confidential source by this Committee threatens to do irreparable damage to this important reporter-source relationship in the congressional context.

Third, looking beyond the congressional context, the reporter-source relationship is an important element of the entire governmental process. Confidential sources provide the press with otherwise unavailable information about government -- its workings, its officials, and its mistakes. Through this system of information gathering, the public learns and, hopefully, votes and speaks more effectively. One element of the bureaucracy may criticize another. One employee may criticize the bureaucracy. Corruption is uncovered, deception is exposed, and waste is eliminated. See Appendix B (Affidavit of Richard Neustadt). As Mr. Justice Brandeis has noted, "Sunlight is said to be the best of disinfectants." Ultimately, the public benefits.

The public is not, however, the only beneficiary of this reporter-source network throughout government. Congress also benefits. Congress is assigned an important oversight function by our constitutional system of government. Congress not only makes the laws, it also sees that they are effectively administered. With limited staff and limited resources, it is impossible for Congress effectively to oversee the myriad of governmental agencies, bureaus, and departments. Congress must, of necessity, rely upon

the press -- as a vital adjunct of the oversight function -- to uncover subjects for congressional investigation and inquiry. The press is "the handmaiden" of effective congressional oversight. Cf. Sheppard v. Maxwell, 384 U.S. 333, 350 (1966). When the reporter-source relationship is threatened, the Congress -- and its oversight function -- is hurt.

Fourth, the pervasive existence of this reporter-source relationship throughout government highlights another factor which this Committee must consider when approaching the case. Why Daniel Schorr and his source? Why this particular reporter-source relationship? If, as we all know to be the case, reporter-source relationships are found throughout Congress and throughout government and if they result in the release of information every day, it seems shockingly unfair to isolate this single relationship for scrutiny and punishment.

The Congress has not in modern times investigated such a disclosure of congressional information. Why, if something must be investigated, does this Committee not look into the recent disclosure of information from this very Committee on the investigation of Congressman Sikes? Why is the Pike Committee report -- containing already-disclosed information that will not impair our national security -- any more important than the solemn judgment of this Committee on the ethics of a fellow Congressman? We do not advocate that this incident be investigated. We merely point to that disclosure as but one example of an uninvestigated incident. There is a fundamental unfairness in the selective-enforcement aspects of this case.

Also, if there is a need to "plug leaks" in the congressional structure, Congress can repair its own house, prospectively. It should not look to Daniel Schorr and the forced disclosure of a confidential source to accomplish this goal. Committees can

operate without disclosure of information. The brilliant performance of the House Judiciary Committee's Impeachment inquiry demonstrates as much. See, Ethics Hearings at 382 (Rep. McClory).

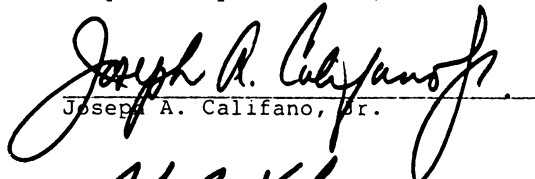
CONCLUSION

In sum, the reporter-source relationship is a vital link in the informational chain which has made the American public the best informed, most knowledgeable, and most outspoken citizenry in the world. To a large degree, our citizenry is informed because of the free press we zealously guard. This Committee should not endanger our free press by exerting a stultifying influence on the newsman-source relationship. "Our liberty depends on the freedom of the press," wrote Thomas Jefferson, "and that cannot be limited without being lost"

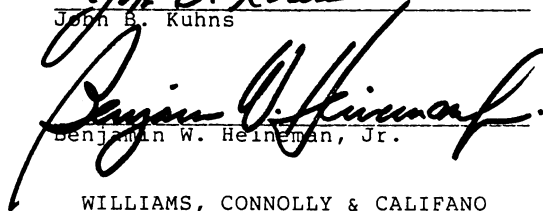
Both constitutional law and sound public policy counsel that, in the circumstances presented, no purpose will be served by attempting to compel Daniel Schorr to reveal the identity of his confidential news source. By contrast, such an attempt will threaten the First Amendment rights which guarantee

effective self-government; it will diminish respect for the exercise of Congress' own constitutional powers in aid of its legislative functions; and it will perform a grave disservice to the American people for whom the power of the Congress to investigate and the right of the press to publish should be linked in creative union rather than poised for unnecessary conflict.

Respectfully submitted,


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Dated: September 13, 1976

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Hearings Conducted .
Pursuant to House Resolution 1042 .
.

APPENDIX A TO MEMORANDUM IN SUPPORT
OF DANIEL SCHORR'S CONSTITUTIONAL RIGHT NOT TO
DISCLOSE THE IDENTITY OF HIS CONFIDENTIAL NEWS SOURCE

1. "Red-lined" copy of the final report of the House Select Committee on Intelligence which appeared in the Village Voice supplements of February 16, 1976 and February 23, 1976. All information within the red boxes had appeared in the public hearings of the House Select Committee on Intelligence or in news reports on the Select Committee's activities published before January 30, 1976, by the New York Times, the Washington Post, or CBS News.
2. Affidavit of Deborah Leff explaining how the "red-lined" copy was prepared.
3. Affidavit of Herbert Scoville, Jr., former Deputy Director for Research of the Central Intelligence Agency, demonstrating that publication of material not enclosed by red boxes in the Village Voice version of the Select Committee report did not reveal any new information which could significantly harm the security interests of the United States and was not already widely known by foreign intelligence agencies.
4. Affidavit of Morton H. Halperin, former senior staff member of the National Security Council and Deputy Assistant Secretary of Defense (International Security Affairs), demonstrating that all material not enclosed by red boxes in the Village Voice version of the Select Committee report was information previously available to anyone interested in the subject matter, and that publication of this information has not injured national security.

(639)

The Select Committee's Investigative Record

①

Costs

No money shall be drawn from the Treasury, but in consequence of Appropriations made by law, and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. Art. I, Sec. 9, cl. vii, U.S. Const.

Money and spending were the first topics of Committee hearings. This choice of a beginning and it implemented a straightforward investigative technique—by following the dollars, the Committee would locate activities and priorities of our intelligence services.

The inquiry was fruitful and interesting. In the first, it was over GAO accounting in loan to the Committee had conducted the foreign intelligence budget is ~~three to four times more costly than Congress has been told~~.¹³⁹ An OMB review of the domestic intelligence budget, conducted at the Committee's request, concluded that it may be five times the estimate given to Congress by federal officials.

Totals do not tell the whole story. Congressional and Executive scrutiny of these budgets was found to range somewhere between cursory and nonexistent. Spending controls by the agencies themselves were, likewise, often inadequate, as a few preliminary examples indicate.

- A CIA Station in a small country spent \$41,000 on liquor in one year.
- Three-way monies were spent to provide heads of state with female companions, and to pay people with questionable reputations to make pornographic movies¹⁴⁰ for blackmail.
- The "accommodation procurement" mechanism was used to buy limousines for foreign dignitaries, with cash payments that were difficult to verify.

thing they can or will say must be kept a secret. At the same time, up to more than \$10 billion being spent by a handful of people with little independent supervision, with inadequate controls, even less auditing, and an overabundance of secrecy.

It begins with OMB officials and their counterparts in the various agencies. Testimony before this Committee revealed that only six OMB employees work full-time on the foreign intelligence budget. Of those six, three are former CIA employees. In turn, the CIA official in charge of the Agency's budget has recently arrived from OMB, where he had primary responsibility for CIA's budget.

This in itself, does not bode well for a vigorous review of the merits of intelligence programs. It is set back further by the fact that OMB is not told of sensitive projects as they are being planned. Even after it is told, OMB's officials are not free to evaluate all details of sensitive projects.

The absence of real involvement by outsiders in intelligence spending continues. For example, CIA's budget appears as only a single line item in the published Federal budget. This is done in the name of secrecy, but it gives CIA an unusual advantage. Congress requires any agency wishing to transfer funds from one line item to another to come back to Congress for approval.

This is called reprogramming. Most agencies have many line items, giving Congress some check on their spending. CIA has had no reprogramming problems in the past. It could tell Congress it was spending a certain amount on covert action, then proceed to transfer large amounts to covert programs without Congress' approval.¹⁴¹

This is not however, the most significant lack of knowledge about intelligence spending. Billions of dollars spent every year for intelligence are not included in the "official" intelligence budgets. One way this has been accomplished has been by shifting items that have traditionally appeared in the

figures, the Committee estimated that the cost of intelligence today is at least three to four times the amount reported to Congress.

An obvious question is how can there be such a difference in total cost estimates? One answer is the lack of coordination in approaching the budget. Another is that there are no adequate standards for what is, and is not, intelligence spending. A final answer may be that there is a conscious desire to keep the totals small, by dividing and confusing the estimates.

It should be obvious that if nobody has ever added up the costs of the many domestic intelligence units, then certainly nobody is coordinating their budgets, as intelligence per se. In foreign intelligence, the problem is to a large degree, a lack of centralized authority. For example, the DCI presents the foreign intelligence budget to Congress and the President, but he only has authority for CIA's budget. Defense officials testify that a substantial part of their intelligence budget is considered the responsibility of the Secretary of Defense. The DCI, they say, rarely reviews their work.

Fragmented authority leads to overall coordination problems. A good illustration is the existence of separate counterintelligence targets in FBI, CIA, NSA, DIA, Navy, and Air Force.¹⁴² Some are included in the intelligence budget; some are not. Some coordinate with other counterintelligence programs, some do not. The FBI testified, for example, that it does not know if CIA has a counterintelligence group, that it does not know how much CIA's operations cost, and that it does not know if CIA duplicates FBI work.¹⁴³

Fragmented authority and coordination leave the budget wide open to distortions. Each agency applies its own budget standards.

There is, for example, no standard for allocating the cost of a military base whose primary purpose is to support intelligence operations. The repair of a

- A huge arsenal of weapons and access to ammunition have been developed by CIA, giving it a capability that exceeds most armies of the world.
- A middleman who is a close friend of top FBI officials took thousands, if not millions, of dollars of unwarranted markups on to covert purchases.

These examples reflect the wide range of problems with secret financing of secret activities. A more detailed review of these and other examples, along with the basic processes or mechanisms that accompany them, is a good base for suggested reforms.

1. Deceptive Budgets

Much attention is paid to numbers when the foreign and domestic intelligence budgets are prepared. Not much attention is paid to substance.

The Office of Management and Budget (OMB), the Director of Central Intelligence (DCI), and other officials go through an elaborate process in arriving at budget numbers. As described to Congress, it is an impressive procedure.

What is not described is the close, almost inbred relationship between OMB officials and intelligence budgetmakers. OMB also does not point out that it completely lacks the expertise to evaluate huge technological expenditures by the National Security Agency.

Executive officials do not stress the lack of our realized budget authority in the intelligence services, which causes enormous waste, duplication and hidden costs in military intelligence. There is little consideration given to the extraordinary spending latitude granted to CIA, or to the CIA's heavy use of "unvouchered" funds. There is no explanation from FBI of the reasons for millions of dollars of "confidential" purchases.

When appearing before Congress, executive officials do not review the inadequacies of internal Agency auditors. No mention is made of items transferred elsewhere in the federal budget to keep the intelligence budget small.

OMB officials do not remind Congress that our government's auditors—the General Accounting Office, have been denied access to secret intelligence budgets for more than a decade. They do not explain abuses of covert purchasing mechanisms, domestic as well as foreign.

These same officials do, however, stress that any-

intelligence budget into other budget categories. For example, the Department of Defense has switched the following items by reclassifying them as "communications": Counterintelligence and Investigative Activities; Mapping, Charting, and Geodesy; and the Advance Location Strike Program. A sizeable secret reconnaissance activity at Defense was switched to "research and development." All of these activities and many more were, until recently, in Defense's intelligence budget.¹⁴⁹ Defense is not alone in using this tactic.

The costs given Congress for military intelligence do not include expenditures for tactical military intelligence, which would approximately double intelligence budgets for the three armed services.¹⁵⁰ Roughly 20 percent of the National Security Agency's budget is not added into the intelligence budget. It should be noted that NSA does nothing else except gather and analyze technical intelligence, and it has one of the largest budgets in the intelligence community.

Sometimes entire agencies, such as the Defense Advanced Research Projects Agency, are completely omitted from estimates of intelligence-related costs as well as the intelligence budget.

The budget for the National Security Council is omitted completely, although a sizeable portion of their staff and subcommittees work exclusively on intelligence matters.¹⁵¹

Still another technique is undervaluation of the real cost of certain operations. The Committee analyzed one covert operation and found that the dollar amounts given by CIA for weapons supplied were about half of the Defense Department's contract prices.

At the Committee's request, OMB did add up the total cost for all federal domestic intelligence, for the first time ever. The total they came up with was more than five times the amount that had been given to the Committee in testimony by domestic intelligence officials.¹⁵² The FBI, for example, had neglected to include such clear intelligence functions as the National Road Data Center, or Counterintelligence. More significantly, there had never been an attempt to add up all the divergent intelligence operations in the federal government.¹⁵⁶

By using the new OMB figures for domestic intelligence, and by adding such items as transferred expenditures, the full NSA budget, and revalued cost

submarine damaged on intelligence duty may have been included in spy costs. The Committee asked OMB, GAO, and all the intelligence agencies for their standards for allocating support costs. No agency had any to offer. No agency had even a basic definition of intelligence.

In a statement prepared for the Committee, the DCI made it clear that there are no good definitions in use today. As he said, "... [I]n essence, it boils down to a judgment call."

The Committee has compiled its own set of suggested guidelines.¹⁶⁴ In addition, a good first step would be to include the same items in the intelligence budget from one year to the next. This alone would have prevented the official intelligence budgets from remaining at constant levels over the past few years, which is fundamentally deceptive.

Footnotes:

¹⁵⁵A special study done in 1971 by Dr. Schlesinger, as head of OMB, concluded that the foreign intelligence budget was nearly double the amount being told to Congress at that time. See, *A Review of the Intelligence Community*, OMB (March 10, 1971).

¹⁵⁶One of these was titled "Happy Days, With Mr. Robert Maheu as Acting Director, make-up man, cameraman and director."

¹⁵⁸MR. ASPIN: For the record again, tell us who has to approve reprogramming, who is informed, and who approves reprogramming?

"MR. COLBY: I do."

"MR. ASPIN: And that is all?"

"MR. COLBY: Yes...."

... Comm. Hearings ... Aug. 4, 1975.

¹⁴⁹In total, the transfer of these programs from the "intelligence" portion of DoD's budget to "Communications" and "Research & Development" by themselves involved hundreds of millions of dollars and thousands of personnel.

¹⁵⁰Some costs for military/tactical activities are disclosed to Congressional Committees in chart form, entitled "Intelligence Related." However, after examination, the staff believes that the charts vastly understate the costs of military/tactical intelligence activities.

¹⁵³Examples of this would be the Forty Committee whose sole task is to approve covert action projects, or the Verification Panel and its Restricted Working Group who verify intelligence indicating alleged Soviet violations of SALT.

¹⁵⁵Letter to Staff Director, from Mr. Ogilvie, OMB,

Nov. 12, 1975:
"Department of Justice

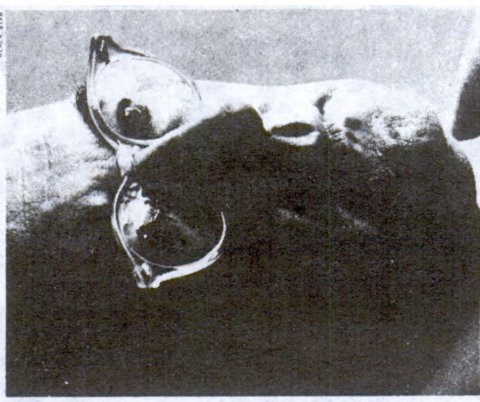
	FY76 except as noted \$ in K	Personnel
Deputy Attorney General's Office	125	5
Federal Bureau of Investigation	87,119	3385
Drug Enforcement Administration	11,913	463
Immigration & Naturalization Service	814	38
Criminal Division	1,262	51
	101,233	3942
Civil Service Commission		
National Agency Check & Inquiry	3,366	265
Full Field Investigations	15,386	722
Other Investigations	3,082	95
	21,834	1082
Department of Treasury		
Bureau of Alcohol, Tobacco & Firearms	62,929	2269
Customs Service	183,441	7748
Internal Revenue Service		
Intelligence Division	101,942	3813
Internal Security (Inspection)	12,141	553
Secret Service	94,466	2934
INTERPOL dues	140*	—
INTERPOL other	388*	—
	455,447	17,317
Energy Research & Development Administration	295	15
TOTALS	578,809	22,356"

*1975 costs.
[15] Testimony on Aug. 7, 1975 by Eugene W. Walsh, Assistant Director, Administrative Division, Federal Bureau of Investigation:
"Mr. FIELD. It sounds like that is all they are over there for and that it is a way of shifting the real cost of intelligence out of that budget. How about the

b. Strategic intelligence is intelligence in support of military plans and operations at national and international levels.

2. An Absence of Accountability

The General Accounting Office (GAO) is the auditing arm of Congress when it comes to intelligence. ~~GAO has no authority to audit intelligence activities.~~
In the early years, GAO was generally limited to an auditing function. With the passage of time, Congress has turned to GAO for more than balancing books. Today, under authority of law, GAO is empowered to analyze the economy and efficiency with which government funds are spent.
The Comptroller General, who heads GAO, testified that he cannot even balance CIA's books, let alone analyze its efficiency. Specifically, he said that



Former CIA Director Colby:
Under considerable pressure to "generate" numbers.

viate from the standards of professional Certified Public Accountants, and CIA has not compiled a list of these and other shortcomings in audit and control, for both foreign and domestic intelligence agencies, lead to an inevitable result—spending abuses.

3. Spending Abuses

The easiest way to illustrate problems encountered in secret spending is to examine a number of mechanisms currently in use, and a number of situations that have grown out of those mechanisms.

a. Covert Procurement

Many CIA covert actions and clandestine operations must be supported in a "non-attributable" manner, which led CIA to establish a covert procurement branch. Unfortunately, covert procurement has become an overused, expensive, and often uncontrollable technique for questionable purchasing.
The branch's activities include support of overseas stations and the procurement of weapons and paramilitary materials. To facilitate these requirements, covert procurement has under its control a number of operational proprietaries and "notional" companies. Notional companies are merely paper firms, with appropriate stationery and checking accounts. These companies make requests to the proprietaries so the proprietaries can bill an apparently legitimate company for covert requirements. Needless to say, it is an expensive way to buy a refrigerator, and should not be used unnecessarily.

When an overseas station requires an item that cannot be traced to the United States government, it sends a requisition with a special code. One code is for items that should not be traceable to CIA. Another code means it should not be traceable to the U.S. government.

Theoretically, once these codes, called "sterility codes," are attached, there is no more traceable link between the item and the government. However, the Committee reviewed documents which showed that items purchased in a non-traceable manner are sometimes transported by U.S. military air-pouch rather than sent by private carrier as a truly non-government purchase would be.

Another procedure which the Committee staff questioned was the routing of requests for small quantity, low-cost, and even non-traceable items through the ex-

National Bomb Data Center?
"MR. WALSH. Yes, sir.

~~"MR. FIELD. That is intelligence?~~
~~"MR. WALSH. It may be in the dictionary's defini-~~

~~159 When Mr. Walsh appeared before the Committee on Aug 7 1945 he was asked if FBI was~~

grams:
"Are you aware that the CIA, the DIA, the Army,

"MR. WALSH. I haven't acquainted myself with counterintelligence programs."

160 Mr. Walsh was also asked: "Do you know if
the CIA spends more than you do?"

~~"MR. FIELD. Has anybody in the administration ever told all of these people, who spend multi-multi-~~

'MR. WALSH, I have no knowledge on that side of my generation, told them to 'get their act together'?"

'MR. WALSH. I have no knowledge on that, no
ing" Comm. Hearings Aug. 7, 1975

1. Foreign/National—This intelligence relates to "national" programs (i.e., overhead reconnaissance with various detection and sensing devices) targeted

s "national" in the sense that it is a concerted effort of the CIA, DoD components and State Department.

on the broad aspects of U.S. national policy and national security transcending the competence of a single agency to produce

activities of civil departments and agencies such as DEIA, IRS, FBI. It is conducted within the United

3. **Military/Tactical**—Intelligence of this nature includes a variety of DoD activities to support mili-

...projects for upgrading present radar early warning

of military plans and operations at the military unit level.

spending:

Last year GAO was directed to compile basic budgetary information on federal investigative and

A NSA and intelligence agencies of the Defense

Bureau offered special summaries, but refused to
 have any verification of those summaries.

ous. In January 1966, the CIA enter into a sole-source contract with the management consulting firm of Deat-

CIA officials conceded that these independent contractors could have saved taxpayers some money, if it had given GAO access.

classified procurement documents, as well as all personnel concerned with Agency procurement activities.

A cover memorandum addressed to the Inspector issued a full report of findings and recommendations.

By contrast, this Committee's staff encountered lengthy delays in gaining limited access to similar

Peat, Marwick, Livingston & Co.
The issue is not really whether Congress—with

~~issue is whether an objective look at secret expenditures ever takes place.~~

Even this Congressional investigating committee has now tested access and come up wanting.

The CIA is a good example. Their audit staff is un-

and extensive agency spending that ~~does~~ place worldwide. They are allowed to balance books, but they

transactions are checked, even though these add up to 20 percent of CIA's entire budget. Substantive

The staff was also unable to determine the reason for certain high-cost items being purchased through

The question is why an American television would be purchased here and sent to Europe if someone was

to be installed on an appliance bought in the U.S. be-

The same question arises with the purchases of property purchased for use in the United States.

ings in the past few years. In that context, additional covert purchases here at home seem excessive. Finally,

As in every other component of the Agency, the ef-

The Committee was told that because proprietary employees do not have a "need to know" they are not

conceded that the sterility code is not questioned by the cover procurement staff. The 1966 study by [redacted] Livingston & Co. noted that there

_____ Situation has not been remedied _____

~~The Committee's investigation of the covert procurement mechanism led to a review of records from~~

and for the past five fiscal years ~~from three fiscal~~

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overseas stations varying in size and number of employees. Overexpending and under-auditing seemed to be prevalent.

An example is a medium-sized station that purchased over \$86,000 in liquor and cigarettes during the past five years. The majority of these purchases were designated "operational gifts"—gifts to friends or officials in return for information or assistance.

It would appear that spending practices were an uncanny way of changing with new station chiefs. A station that purchased \$1,000 in liquor in 1971 had a new chief in 1972. Liquor purchases dropped to \$25,000, which is still a lot of liquor.¹⁹⁰

One station had purchased over \$175,000 in furnishings for leased quarters and satellite houses.¹⁹¹

In an effort to determine whether this kind of spending is questioned by CIA auditors, the staff interviewed the CIA audit official who audited these stations. He recalled the liquor, and that when he inquired as to the quantity, he was told by the Station Chief that they would "try to hold it down in the future."¹⁹² The same auditor had audited the station that purchased over \$175,000 in furnishings. When questioned, he was not even aware of the total figure.

This experience led the Committee staff to interview several members of the Internal Audit Division, as well as eight overseas case officers and chiefs of station. From these interviews, several things became apparent.

Auditors do not perform thorough reviews of case officers' "advance accounts." At all overseas stations, each case officer is allotted an advance, which is nothing more than a petty cash fund. From this fund, the officer pays operating expenses and the salaries of his agents. He is required by Agency regulations to obtain a receipt for every expenditure, but due to manpower considerations, these are only spot-checked when audited—which is not often.¹⁹³ Such funds run into millions of dollars each year.

Every case officer and Internal Audit officer conceded that the Agency must "rely solely on the integrity of its case officer." When a case officer's agents refuse to sign receipts, the case officer "certifies" that he expended the funds. A case officer might have as many as ten agents working for him, each of whom may receive between \$50 and \$3,000 per month, all in cash.

Finally, audits of all overseas stations are not per-

In one instance, a foreign official described his son's enthusiasm for model airplanes as the chief of station. The foreign official wanted three model airplanes. The chief of station, who was a CIA officer, precisely where the kits could be purchased in the United States. A cable was sent to Agency headquarters asking for the purchase of three kits from the store in Baltimore suggested by the foreign official. Further, the cable instructed that the items were to be designated by a "sterility code," to indicate that the purchase of the kits could not be attributable to the United States government. Documents provided to the Committee in this case by the Agency were sanitized.²⁰⁶

In another instance, the President of a nation was preparing to play golf one afternoon. Anticipating his third afternoon in the sun, he made a "casual" request to the local CIA station for six bottles of Gatorade. An Agency employee was immediately relieved of his ordinary duties and assigned to make the accommodation procurement.²⁰⁷

Nor was this the chief of state's only experience with the Agency's merchandising talents. In the past, the Agency has purchased for him several automobiles, including at least two custom-built armored limousines,²⁰⁸ and, among other things, an entire electronic security system for his official residence. It is worth noting that these security devices are being supplied to a man who runs a police state.

Accommodation procurements have also involved more expensive and politically sensitive items. For example, another head of a one-party state had long been fascinated by certain highly sophisticated electronic intelligence gathering equipment. He wished to develop his own independent collection capability. As an accommodation, and to "share the cake," the Agency procured an entire electronic intelligence network for him in two phases. Phase I involved contract costs in excess of \$85,000, and Phase II cost more than \$500,000.

In investigating one series of accommodation procurements for an oil exporting country, the Committee asked CIA officials about the coordination and effect of the Agency's purchasing favors of the foreign country's oil price policy. The country's oil policy, incidentally, has not been among the most favorable to the United States. Agency officials were uncertain as to the effect, but they indicated that the two policies are largely considered separate issues.

In return for making accommodation procurements,

officer indicated that, to a considerable degree, the technical representative actually makes the contractual decisions, and the contracting officer then has to "catch up" by preparing contract amendments to legitimize changes already made.

Another target of the investigation was the disposal of Government Furnished Equipment (GFE). Regulations regarding GFE appear to be precise in determining when to "abandon" this equipment. However, the Office of Communications, for example, contracted in 1965 with an electronics company to do research work. The contract required the purchase of a large piece of industrial equipment, as well as related testing equipment. CIA provided funds for the equipment as well as the research.²²¹ The testing equipment cost \$74,000 and the industrial equipment over \$243,000. At the termination of the contract in 1975, the testing equipment was sold to the contractor for \$18,500, the large piece of industrial [equipment] was abandoned, in place.

Calls to the manufacturer of this piece of machinery, as well as two "experts" in the field of this particular type of testing, revealed that the machinery which was abandoned, while perhaps "useless" to the Agency, was not a "worthless" piece of equipment which should have been "abandoned." According to documents provided to the Committee, CIA made no attempt to contact other government agencies, to see if the chamber could have been used by another agency.

c. Colleges and Universities

In 1967 Ramparts Magazine disclosed CIA support to the National Students Association. As a result, President Johnson issued a flat prohibition against covert assistance to educational institutions; but the Agency unilaterally reserved the right to, and does, depart from the President's order when it has the need to do so.²²⁴

There is no evidence that a President authorized the departure from the Johnson directive.

As background, President Johnson had appointed a committee to investigate the matter and make policy recommendations.

Under Secretary of State, Nicholas deB. Katzenbach, and CIA Director, Richard H. Helms, served on the Committee. It recommended that "no federal agency shall provide any covert financial assistance or support, direct or indirect, to any of the nation's edu-

formed on a regular basis. It may be two or three years or more, before a station is visited. Even then, the Committee discovered that recommendations made by auditors are usually not disclosed in the auditor's report to headquarters.

c. Accommodation Procurements

In addition to procuring goods and services for its own use, CIA makes "accommodation procurements" for foreign governments, officers, agents, and others. The Agency serves them or less as a purchasing agent for an undisclosed principal. Although the individual for whom the accommodation procurement was made advances the necessary funds, the Agency repays the Agency after delivery, the indirect administrative costs are borne by American taxpayers. These costs include the salary of the agency purchaser, certain transportation charges, accounting costs, and in some cases the salaries of training and technical personnel. In investigating one series of accommodation procurements, the Committee learned that a foreign government received a 20 percent discount by having CIA buy equipment in the name of the U.S. government.

If the foreign government had contracted for the same items in its own name, this discount would not have been available. In just two of these actions CIA saved the foreign government over \$200,000, at the expense of American taxpayers.

The Agency will usually refuse to make such procurements only if the requested item might appear to be beyond the requester's financial means, and might therefore give rise to questions about the requester's sources of income. Agency security officers feel that such questions might lead to disclosure of the requester's relationship with the agency.

Accommodation procurements involving less than \$1,000 require only the approval of a CIA chief of operations. When larger sums are involved, approval must be obtained from the Deputy Director for Operations. When the amount is more than \$500,000, it must also be approved by the Director of Central Intelligence.

The Committee examined a number of accommodation procurement records. The following examples indicate that the facilities and resources of the United States government are sometimes used to provide more than the whims of foreign officials.

the Agency is usually reimbursed by the requesting party. Although reimbursement may be in U.S. dollars, it is usually made in local foreign currency. The Committee was unable to learn whether the Agency has any firm policy on what rate of currency exchange is to be used in making reimbursement. In many countries, U.S. dollars exchanged for local currency at the official rate bring fewer units of local currency than if exchanged at an unofficial, but more commonly used, rate.

d. Research and Development

CIA has long prided itself on technological capability, and many of its projects operate at far reaches of the "state of the art." Such accomplishments are made by the Agency with assistance and advice from the private sector.

Each year, CIA's Deputy Director for Science and Technology enters into hundreds of contracts with industry, usually in the name of the government. These contracts total millions of dollars. Not only does the Agency contract for its own research and development programs, but also for national intelligence programs. Total contracts for both programs amount to hundreds of millions of dollars annually.

Committee Staff interviewed numerous members of the Science and Technology Staff. A major target of this investigation was "contractor selection" practices. Although Mr. Colby testified before the Committee that CIA has established management controls to insure that contracting is carried out according to the intent of Congress, the investigation revealed that 84 percent of these contracts are "cost source contracts."

Staff also examined "cost overruns." Aspects of research and development contracting CIA claimed two and one-half percent of all research and development contracts involved cost overruns of 10 percent or more. There is no reason to doubt the figures, however, certain caveats must be considered. Contractors' cost estimates in sole-source contracts can easily be inflated to cover anticipated cost increases. Overruns can also be labeled "changes in scope."

In several interviews with contracting officers, "by the book" answers were given to questions regarding which officer is authorized, and does, accept contract changes. However, one former Agency contracting

national or private voluntary organizations." On March 29, 1967, President Johnson issued a statement accepting the recommendation and directing "all agencies of the government to implement it fully."

The Agency then issued internal policy statements to implement the President's orders, stating that, whenever possible, the Agency's identity and sponsorship are to be made known. But the Agency was to clearly retain the option of entering into a contract with colleges and universities after obtaining approval from the Deputy Director for Administration.

Mr. Carl Duckett, Deputy Director for Science and Technology, testified before the Committee on November 4, 1975, that the Agency still has on-going contracts with "a small number of universities." Mr. Duckett also revealed that some of the contracts involved "classified work," and some are covert.

f. U.S. Recording

On October 9, 1975, the Committee held hearings on electronic surveillance in the United States. One of the witnesses, Mr. Martin Kaiser, was a manufacturer of electronic surveillance and counter-measure equipment. In the course of his testimony, he revealed that all sales of his equipment were routed—pursuant to FBI instructions—through a cut-out or middle-man, U.S. Recording Company of Washington, D.C. 20533.

The equipment was neither modified nor serviced by U.S. Recording. Kaiser testified that he delivered 80 percent of his equipment directly to the FBI. On one such occasion, Kaiser received an invoice from U.S. Recording for equipment he had supplied, and it showed that U.S. Recording had marked on 10 percent more than it had paid for the devices.

The mark-up increased Committee investigators because, according to Kaiser, the middle-man had handled only paperwork and deliveries. The staff therefore acquired records of all sales between U.S. Recording and the FBI involving Kaiser's equipment. A Committee staff accountant did a detailed study and determined that the 30 percent mark-up on the invoice seen by Mr. Kaiser was representative of all such sales.

As a result of numerous interviews, it became apparent that Mr. Joseph Tail—the President of U.S. Recording—was a long time friend and poker-playing

commission of Mr. John P. Mohr, the Associate Director of the FBI in charge of Administration until 1972.²³⁶

During the course of investigation, the staff learned the poker games had been held in the Blue Ridge Club near Harpers Ferry, West Virginia. Several weekends each year for the past decade.²³⁷ Games were included FBI officials connected with the Administrative Division, OMB officials, and a procurement officer from CIA. The only non-governmental officials at the poker games were Tait, and Mr. Gus Oberdick—the President of Fargo International—a supplier of police equipment to the FBI and CIA.²³⁸

Mr. Mohr had invited all the guests, although Mr. Tait was the only person in the poker games who possessed membership in the Blue Ridge Club. Interestingly, the Blue Ridge Club burned to the ground the evening before two staff attorneys traveled to Harpers Ferry to examine its records.

Most purchasing procedures of the FBI are governed by General Services Administration (GSA) regulations. However, confidential contracts are not subject to GSA regulations or supervision. The U.S. Recording Company was the sole company serving as an FBI cutout.²³⁹ Interviews revealed that there was virtually no control exercised over the confidential contracts between U.S. Recording Company [and] the FBI.

Neither the Laboratory Division, which initiated the equipment requisitions, nor the Administrative Division, which authorized the requisitions, had any knowledge of the percentage markup being charged. The General Services Administration was consulted and gave an opinion that an appropriate mark-up for similar services would have been in the 5 percent range.

FBI's use of U.S. Recording was apparently motivated by the need for secrecy in purchases of sensitive electronic equipment. That justification appears questionable. In most instances, FBI Laboratory Division personnel negotiated for equipment directly with the manufacturers. When manufacturers later received purchase orders from U.S. Recording, for equipment with corresponding model number, quantities, and prices, it was apparent that the equipment was indeed going to FBI. In fact, the FBI told Kaiser that they were using U.S. Recording Company and not to worry about it.

FBI's use of U.S. Recording represents a grossly inefficient expenditure for intelligence equipment. Similarly, the fact that the persons within the FBI respon-

sel, Comm. on Intell. Further, it was revealed during these interviews that polygraph examinations of staff employees, at one time carried out on a regular basis, are no longer performed except during pre-employment investigations. The agency continues, however, to polygraph indigenous agents on a regular basis.

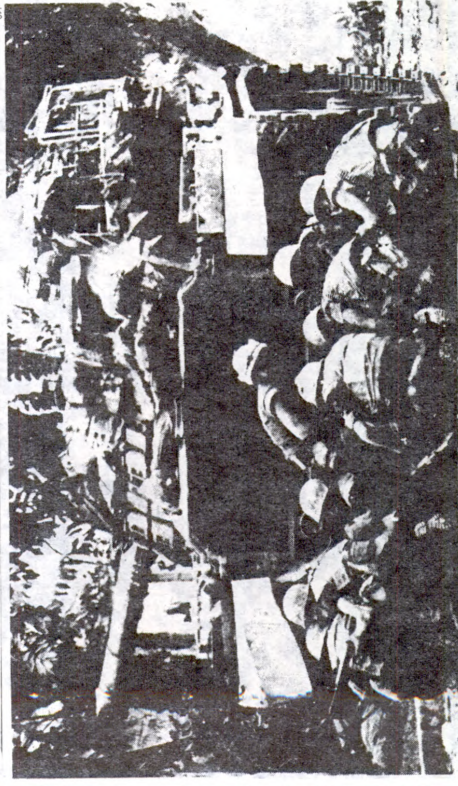
²⁴⁰This information first came to the attention of the Committee from staff review of requisition documents in Sept., 1973. Further inquiry about the model plane purchases led CIA to give staff access to the cables.

²⁴¹This was related to Staff, in response to questions concerning "accommodation procurements" made for the President of the allied country. The response was supplied by the former Chief of Station in the country. Interview with Chief of Station, by S.A. Zeune, Oct. 31, 1973, copy on file with Sel. Comm. on Intell.

²⁴²CIA documents made available to the Committee revealed that the Agency made three such accommodation procurements for the Chief of State. In all three instances—three times in the last ten years—

contracting arrangements with academic institutions and this can be carefully monitored and accomplished within the policies and principles expressed in the Kaizenbach report... Memorandum for Director of Central Intelligence, June 21, 1967.

²⁴³I began my relationship with the FBI around 1967 or 1968. All my correspondence was sent directly to the FBI. However, I think it was on only one occasion that the Bureau ever contacted me personally. All other addresses were made personally or verbally. Once they began purchasing equipment I was directed not to send this equipment to the FBI, but rather sell it to a company known as United States Recording, a private company operating on South Capitol Street in Washington, D.C. I informed the Bureau, as if they needed that piece of information, that Federal law would not allow me to sell equipment to anyone except bona fide governmental agencies. The FBI agents assured me my actions were proper and subsequently supplied a stamp to United States Recording which purported to certify on the



American troops under fire in the Tet offensive January, 1968: "Pearl Harbor all over again."

sible for requisitioning and purchasing the equipment had no clear knowledge of the chain of authority regarding the arrangement, is at best, nonfeasance. The arrangements are presently being investigated by the Criminal Division of the Justice Department, and by the IRS. The Committee has made its information on this matter available to both authorities.

Footnotes:

¹⁸⁷"Sterility Codes," as they are termed within the Agency, designate the "degree of traceability" which can accompany an item procured or shipped. These codes range from "unclassified," which may be attributed to CIA, to a code which designates that a purchase is so sensitive that it is an "off-shore purchase of a foreign item."

¹⁸⁸... This was one of many deficiencies and recommendations highlighted by the study. Some of the recommendations were adopted; most were not, according to the Committee's investigation.

¹⁸⁹This figure was computed by Committee staff during several reviews of Local Procurement expenditures for one of the three typical overseas situations.

¹⁹⁰Those two figures were likewise computed by Committee staff during reviews of Local Procurement records. The same Agency employee who was chief of the station in 1971 was now responsible for CIA operations in Angola.

¹⁹¹Figures computed by staff during review of local procurement expenditures. "Leased Quarters" are housing units supplied by CIA for staff or contract employees at field stations. "Safehouses" are housing units where the Agency's primary interest is that of a secure location to conduct clandestine meetings; its housing function, per se, is only incidental. The Agency also provides furnishings for these quarters, such as refrigerators, ranges, and living room furniture, and at times provides luxury items, such as china or crystal ware.

¹⁹²Interview with Agency auditor, by S. A. Zeune, Oct. 29, 1975. The auditor concurred, with another high level Agency official, that in the country in question, it was "traditional" to give liquor and cigarettes as gifts. He also stated, "the controls on the issuances [of liquor] are not so stiff."

¹⁹³*Ibid.* Agency regulations permit expenditures of less than \$15.00 without receipts.

¹⁹⁴Staff interviews with case officers and a former Chief of Station revealed this fact. Interviews, by S. A. Zeune, Oct. 17 & 24, 1975, copies on file with

the Chief of State requested that CIA procure the limousines. A Staff interview with the former Chief of Station disclosed that in the instances concerning the limousines, the Agency was reimbursed by way of American currency, hand delivered in bags or briefcases to the Station. In one instance, the transaction involved the equivalent of (U.S.) \$50,000. Further, the documents appeared to reveal that the Agency was not disturbed by the fact that the President, in two instances, did not reimburse the full balance to the Agency until some months after the transaction had taken place. Interview with Chief of Station, by S.A. Zeune, Oct. 31, 1975, copy on file with Sel. Comm. on Intell.

²⁰⁰A Staff interview with the member of CIA Review Staff (and former Chief of Station) revealed that this is considered a further accommodation to the requesting party, inasmuch as the local currency is certain to be more readily available than U.S. dollars.

²⁰¹For security reasons, CIA usually contracts with the name of other government agencies, such as Department of Defense, Air Force, Army. Contractor employees are usually unwitting of CIA's association, although in most cases a high company officer will be named by the Agency on a "need to know" basis.

²⁰²In this instance, CIA did not advance the funds to the contractor for the purchase of the test equipment or the industrial equipment. The cost of both was added to the contractor's fee to the Agency. Interview with Office of Communications staff members, by S.A. Zeune and J.C. Minge, Oct. 28, 1975, copy on file with Sel. Comm. on Intell.

²²⁴"3. It is proposed that upon your approval: "a. The attached guidelines be applied immediately to all future contractual arrangements with U.S. educational institutions.

"b. Contracts and grants now in existence be conform to these guidelines as rapidly as feasible and wherever possible, no later than 30 December 67 for relationships that will extend beyond that date. . . . The thrust of the review of existing contracts and the placement of future contracts will be that our contractor relationships with academic institutions will be strongly on the premise that CIA will be identified as the contractor. . . . Any special contract arrangement will be considered only when there is extremely strong justification warranting a variance from the principles of CIA identification as the contractor. It is felt that the Agency must retain some flexibility for

purchase order that the transaction was in accordance with Federal law." Comm. Hearings . . . Oct. 9, 1975, 238-1 might point out at this time, by the way, that nearly all the equipment deliveries I made to the Equipment Bureau involving orders to United States Recording were handled by me and billed to United States Recording. So the paperwork went through that route. I discovered at one time that United States Recording was adding a 30 percent markup on the bills for the equipment. During my dealings with the Federal Bureau of Investigation I sold them approximately \$100,000 worth of electronic equipment." Comm. Hearings, Oct. 9, 1975.

²³⁹"MR. VERMEIRE: Mr. Tait, I believe at the last deposition, November 21, you mentioned that you had played poker on a number of occasions with Mr. John Mohr, former Assistant Director of the FBI."

"MR. TAIT: Yes. Interview with Mr. Tait, by J. B. F. Oliphant and R. Vermeire, Dec. 1, 1975, copy on file with Sel. Comm. on Intell.

²³⁷"MR. VERMEIRE: And I think you recalled that you had played poker with him not only privately at each other's homes or homes in the area but also at a club on the Harpers Ferry? I think at the time that is all that was said; it was up in Harpers Ferry."

"MR. TAIT: That's right."

"MR. VERMEIRE: What was the name of that club?"

"MR. TAIT: Blue Ridge."

"MR. VERMEIRE: How did you become a member of the club?"

"MR. TAIT: I used to play cards up there . . . with another man by the name of Parsons, Donald Parsons, (former Chief of the FBI Laboratory Division)."

"MR. VERMEIRE: And was Mr. Parsons alive when you became a member?"

"MR. TAIT: No."

"MR. VERMEIRE: How long had you been playing at the club prior to becoming a member?"

"MR. TAIT: I don't know. I'd say probably four or five years."

"MR. VERMEIRE: Who is the one business person who was connected with private enterprise that was there?"

"MR. TAIT: A man by the name of Oberdick."

"MR. VERMEIRE: Mr. Oberdick?"

"MR. TAIT: Yes."

"MR. VERMEIRE: May I have his first name?"

"MR. TAIT: Godfrey."

"MR. VERMEIRE. What business was he in?"
"MR. TAIT. He is—I don't know exactly what you would say. He is a representative to various companies that supply equipment. What companies, I'm not sure."
"MR. VERMEIRE. What kind of equipment?"
"MR. TAIT. Firearms, tear gas." *Ibid.*
This fact was established through numerous staff interviews with knowledgeable FBI personnel in the Laboratory and Administrative Divisions.
"MR. VERMEIRE. Were there other companies that you dealt with in that way?"
"MR. HARWARD. I don't know of any company."
"MR. VERMEIRE. U.S. Recording is the only company that you know of that you had this confidential relationship with?"
"MR. HARWARD. Yes." Interview with Mr. Harward.

4. Budget Secrecy

During Senate hearings in 1973, to confirm James Schlesinger as Secretary of Defense, Mr. Schlesinger indicated it might be possible to make public the total budget cost of foreign intelligence. When William Colby was confirmed as head of CIA in 1973, he, likewise, testified that publication of budget totals might not be harmful.²⁴⁴

In a television interview some years later, Dr. Schlesinger inadvertently revealed the size of the foreign intelligence budget. No great harm apparently came from that disclosure.

In 1973, a recommendation to publish the annual costs of intelligence was made by a Senate Special Committee to Study Questions Related to Secret and Confidential Documents.

On June 4, 1974, Senator J. William Proxmire of Wisconsin offered a floor amendment to a defense procurement authorization bill. His amendment would have required the Director of Central Intelligence to provide Congress with an annual, unclassified report describing the total amount requested for the "national intelligence program" in the budget submitted by the President.

In June 1975, the report of the Rockefeller Commission recommended that Congress carefully consider whether all or part of the CIA budget should be made public.

On October 1, 1975, Representative Robert N.

power in America has?"
"MR. COLBY. I think they have put a great deal of time and attention trying to identify what, and they undoubtedly have a better perception of it than the average taxpayer who takes the general state of the country as he gets it in the press. But—and that comes from the careful analysis of the material that is released when it is." *Ibid.*

Performance

It is one thing to conclude that tens of billions of intelligence dollars have been rather independently spent, and sometimes misspent, over the past few years.

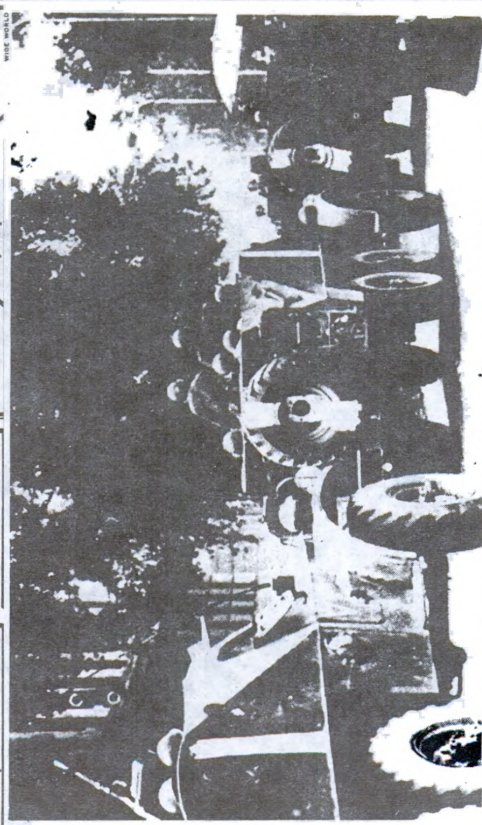
The important issues are whether this spending sufficiently meets our needs, whether Americans have

vented measurement of changes in enemy strength over time. Second, pressure on policy-making officials to produce positive intelligence indicators, reinforcing erroneous assessments of allied progress and enemy capabilities.

a. The Order of Battle Controversy

According to Mr. Colby, the CIA had been suspicious of MACV's numerical estimate of the Vietnamese enemy since at least mid-1966. At an order of Battle conference held in Saigon in September 1967, the differences between Washington and the field, and between CIA and MACV, were thrashed out; but according to Mr. Colby, to neither's satisfaction.

A resulting compromise represented the best resolution of MACV's preoccupation with viewing the order of battle in the classic military sense and CIA's assessment of enemy capabilities as much broader.



Soviet troops in Prague, August 1968: For two weeks the U.S. had "lost" the Red Army.

Giattimo of Connecticut offered a floor amendment to a defense appropriations bill, prohibiting any of the funds provided for "Other Procurement, Air Force" from being expended by the CIA. Had the amendment been adopted, a subsequent amendment would have been offered to restore funds for the CIA, and a specific total for the agency would have been disclosed. Today, however, taxpayers and most Congressmen do not know, and cannot find out, how much they spend on spy activities.

This is in direct conflict with the Constitution, which requires a regular and public accounting for all funds spent by the federal government.

~~Those who argue for secrecy do not mention the Constitution. They do not mention taxpayers. Instead, they talk or rather obscure understandings the Russians might derive about some specific operation.²⁵¹ even if the Russians knew was a single deal, which would be in the billions of dollars and would cover dozens of diverse agencies.~~

~~How the Russians would do this is not clear. The Committee asked, but there was no real answer. What is clear is that the Russians probably already have a detailed account of our intelligence spending, far more than just the budget total.²⁵² In all likelihood, the only people who care to know and do not know these costs are American taxpayers.~~

²⁵¹Footnotes:

²⁵²"When the same question was put to William E. Colby during his confirmation hearings to be Director of Central Intelligence, he replied: I would propose to leave that question, Mr. Chairman, in the hands of the Congress to decide... We are not going to run the kind of intelligence service that other countries run. We are going to run one in the American society and the American constitutional structure, and I can see there may be a requirement to expose to the American people a great deal more than might be convenient from the narrow intelligence point of view." Cong. Rec. S. 9603, June 4, 1974.

~~SEN. CHARLTON PIKE: "... Do you think the Soviets know what our intelligence effort is?" "MR. COLBY: They know a good deal about it, from the various books that have been published by 'X' members of the intelligence community." Comm. Hearings... Aug. 6, 1975.~~
²⁵³"CHAIRMAN PIKE: Don't you think really that the Soviets have a far better estimate of what we're spending for intelligence than the average..."

received their money's worth, and whether non-monetary costs sometimes outweigh the benefits.

The latter question is a matter of risks. . . . To test the first two questions, the Committee investigated a representative spectrum of recent events. Some involved war; some involved law enforcement. Some involved American lives overseas; some involved personal freedoms at home. All involved important interests.

How did intelligence perform? Let the events speak for themselves.

1. Tet: Failure to Adapt to a New Kind of War

War in Vietnam meant that intelligence had to adapt to an unconventional war, and true perceptions could spell life or death for Americans. In Tet, perceptions were shattered.

Taking advantage of the Vietnamese lunar holiday, the North Vietnamese and Viet Cong forces launched an all-out offensive on January 30, 1968, against virtually every urban center and base in South Vietnam. The scale of attacks was unprecedented in the history of American involvement in the Vietnam War and flatly challenged the reassuring picture intelligence officials in Saigon and Washington had helped present to the American people.

With nearly all provincial capitals under siege, the American embassy compound was penetrated by the Viet Cong, and the pacification program set back in all areas; predictions of successes, announced scant months before, had turned into one of the greatest misjudgments of the war.

The Committee's investigation of Tet focused on the questions of warning in a combat situation and communicating the realities of a guerrilla war to executive branch policy-makers. Both are interrelated.

Mr. William Colby and the post-mortems certify warning of the Tet offensive had not truly anticipated the intensity, coordination and timing of the enemy attack. A chief cause was our degraded image of the enemy.

There were at least two primary causes for such degradation. First, the dispute between CIA and MACV (Military Assistance Command, Vietnam) over enemy strength, called Order of Battle figures—based false perceptions of the enemy U.S. forces faced, and per-

people's way. The Special National Intelligence estimate that emerged from this conference quantified the order of battle in MACV terms, and merely described other potential enemy forces. Categories now possessed from previous estimates of order of battle degraded as much as 200,000 irregular personnel, (one word illegible) and secret self-defense forces, and assault (one word illegible) and political cadre.

As foot soldiers realized at the time, and is different studies by the Army Surgeon General confirm, the destructiveness of mines and booby traps, which irregular forces set out, was increasingly responsible for American losses. This was primarily because American forces were engaging the enemy with increased frequency in his defensive positions. Documents indicate that, even during the Order of Battle Conference, there was a large increase in sabotage for which irregulars and civilians were responsible. It appears clear in retrospect that, given the nature of protracted guerrilla war, irregular forces were basic determinants of the nature and scope of combat.

Numbers game not only diverted a major confrontation with the nature of war in Vietnam, but also preserved the intelligence community's perceptions of the President, and certainly Members of Congress, now suggesting the real changes in Vietnam over time.

The Saigon Order of Battle Conference dropped numbers that had been used since 1962, and used those that were left in what appears to have been an arbitrary attempt to maintain some continuity.

Promoted Secretary of State Dean Rusk to cable the American Embassy in Saigon, on October 21, 1967: "Need your recommendation how to resolve problem of unknown percentage of enemy KIA (Killed in Action) and WIA (Wounded in Action) which comes from ranks of self-defense, assault, youth and VC civilian supporters. Since these others not carried as part of VC strength, indicators of attrition could be misleading."

When the Systems Analysis office in the Department of Defense examined the results of the conference and reinterpreted them in terms consistent with prior quantification, it remarked that the new estimate should have been 395,000-480,000 if computed on the same basis as before. "The computations do not show that enemy strength has increased, but that previous estimates of enemy strength were too low."

In the context of the late 1960's, numbers were not at all an academic exercise. Mr. Colby has testified that "(The effort to develop a number with

port your President in his time of need." Rostow then requested that the Office of Current Intelligence produce a compilation of extracts showing progress, which OCI did, while attaching a cover letter caveat. Rostow removed the cover letter and reported to the President "at last an objective appraisal from CIA."

Staff interview with George Allen, Dec. 1, 1975.

Immediately after the Tet offensive, President Johnson began to seek independent assessments of the US role in Vietnam. Turning first to Dean Acheson, the former Secretary of State, he solicited opinions from an informal study group, known as the "Wise Men."

Started by the pessimism of these advisors, manded an individual presentation of three briefings provided to the group, in order to discover "who poisoned the well." George Carver from CIA opined that the President had a two-audience problem and could not very well continue to tell the Americans one thing and the Vietnamese another.

Staff interview with George Carver, Jan. 9, 1975. Defense attaches in Vietnam held the dual responsibilities of monitoring military aid and coordinating intelligence reporting on friendly forces. The former tended to affect the latter, and attaches would use supply figures to interpret South Vietnamese capabilities toward the end of the war.

The Ambassador in Vietnam in 1975 "personally and through his Political Section monitored very closely the intelligence reporting from Vietnam." Reports on the political and economic conditions (including reports on corruption) were either censored or retained within the Embassy. (See Henry A. Shockley, "Intelligence Collection in Vietnam, March 1974-March 1975" in Appendix.)

Z. Czechoslovakia: Failure Of Tactical Warning

The Czechoslovakian crisis challenged our ability to monitor an attack by the Soviet Union, our prime military adversary. We "lost" the Russian army for weeks.

Forces of the Warsaw Pact invaded Czechoslovakia on August 20, 1968, to overthrow the Dubcek regime, which, since spring, had been moving toward liberal, independent policies the Soviets could not tolerate. U.S. intelligence had understood and reported the basic issues in the developing Soviet-Czech confrontation, and concluded that the Soviets were capable

factors. During the time of massive American presence, there was a failure to attribute at least partial South Vietnamese "success" to American air power and logistics support. Consequently, projected ARVN performance in 1975, after the U.S. pullout, was measured against the yardstick of the Easter Offensive of 1972, when American support was crucial.

Mission restrictions curtailed necessary collection activity by professional intelligence officers, and forced reliance on officials charged with military aid responsibilities. This promoted biased interpretations.

The sum total of restrictions, manipulations, and censorship no doubt led to the conclusion Secretary of Defense James R. Schlesinger reached at an April, 1975, news conference. He pointed out that "the strength, resiliency and steadfastness of those forces (South Vietnamese) were more highly valued than they should have been, so that the misestimate, I think, applied largely to Saigon's capabilities rather than Hanoi's intentions."

Ultimately, the Vietnam intelligence experience is a sobering reminder of the limitations and pitfalls the United States can expect to encounter if it chooses to align itself in unconventional battle with unconventional allies. It illustrates how very different guerrilla war is from World War II, and how much more problematic an alliance with emerging and unstable Third World governments will be.

Reviewing the American experience in Indochina, an Assistant Secretary of Defense for Intelligence wrote a note of caution to the Secretary of Defense emphasizing the following view:

"The problems that occurred in Vietnam or Cambodia can now be occurring in our efforts to assess [an allied and an adversary Third World country's] forces, forces in the Persian Gulf or forces in the Middle East. These problems must be addressed before the U.S. becomes involved in any future crisis in the Third World that requires objective and timely intelligence analysis."

Given the substantial American involvement in these areas, strong remedies and honest retrospect appear necessary, to overcome and prevent intelligence output that fails, for whatever reason, to present comprehensive and undisguised perceptions of war.

Footnotes:

²⁴³⁷The memorandum to William Bundy is from Fred Greene of the State Department's Bureau of

respect to the enemy strength was a part of the advising of our government as to the amount of effort we would have to spend to counter that kind of (guerrilla) effort by the Viet Cong. They were also used to inform Members of Congress and the American public on the progress in Vietnam.

The validity of most of the numbers was significantly dubious. Unfortunately, they were relied on for optimistic presentations. For example, while mentioning in parenthetical and classified comments that the numbers supporting its indicators of progress in Vietnam were suspect, the Bureau of Intelligence and Research provided Assistant Secretary of State William Bundy with quantified measures of success.²⁴³⁸ General Westmoreland used such figures to support his contentions in the fall of 1967, that the enemy's "guerrilla force is declining at a steady rate."

In testimony before this Committee, Mr. Collins stated that the "infatuation with numbers" was "one of the more trying experiences the intelligence Community has had to endure" in the context of the period it appears that considerable pressure was placed on the intelligence Community to generate numbers out of tactical necessity than for honest purposes.

The Administration's need was for confirmation of the contention that there was light at the end of the tunnel, that the pacification program was working and generally that American involvement in Vietnam was not only correct, but effective.²⁴³⁹ In this sense, the intelligence Community could not help but find its powers to effect objective analysis substantially undermined. Whether this was by conspiracy or not is somewhat irrelevant.

b. The Consequences

Four months after the Saigon Order of Battle Conference, the Tet offensive began. On February 1, hours after the initial mass assaults, General Westmoreland explained to a press conference, "I'm frank to admit I didn't know he (the enemy) would do it on the occasion of Tet itself. I thought he would do it before or after." The U.S. naval officer in command of the river forces in the Mekong Delta and his army counterpart were similarly caught off guard. Appalled at how poorly positioned they were to provide quick and efficient response, the naval officer, now a retired Vice Admiral, has told the Committee that he "well remember(s) the words of the Army General who

brought us the orders to extricate ourselves from the mudflats as fast as possible. They were, 'It's Pearl Harbor all over again.'"

The April, 1968, post-mortem done by a collection of intelligence officers discussed the general question of warning. It concluded that while units in the corps area were on alert, allied forces throughout the country generally were caught unprepared for what was unfolding. Certain forces even while "on a higher than normal state of alert" were postured to meet "inevitable cease-fire violations" rather than attacks on the cities. In other words, the nature and extent of the enemy's attacks were almost totally unexpected. "One-half of the South Vietnamese army was on leave at the time of the attacks, observing a 36-hour standdown."

In testimony before this Committee, both General Graham and William Colby confirmed the fact of some amount of surprise. General Graham preferred to label it surprise at the enemy's "rashness." Mr. Colby spoke of a misjudgment of their potential intensity, coordination and timing.

Even though quick corrective action was taken to salvage American equipment and protect U.S. personnel, the ultimate ramifications on political and military fronts were considerable. General Westmoreland requested a dramatic increase of 206,000 in U.S. troop strength, and additional equipment supplies. Secretary of Defense Clark Clifford began rethinking the substance of intelligence. A collection of intelligence officers finally briefed the President of the United States on the state of the Vietnam War in mid-March, and a few days later he announced he would not seek re-election.²¹

c. The Aftermath

The Committee received testimony that problems with intelligence in Vietnam were not confined to Tet. Up to the last days of South Vietnam's existence, certain blinders prevented objective reporting from the field and an accurate assessment of the field situation by Washington. Tet raised the issue of whether American intelligence could effectively account for enemy strength. Later events, among them the collapse of the Saigon government, pointed to a failure to properly acknowledge weaknesses of allies.

A real attempt to address the shortcomings of friendly forces in Vietnam was hampered by many

Intelligence and Research and is dated Sept. 22, 1967. It notes that claims of enemy captured, enemy recruited, weapons lost, desertions, incidents of battalion size attacks, killed in action, vital roads opened, and the percentage of population under South Vietnamese control are not supported by the statistics. The memorandum also advises that Mr. Bundy not bring to light other figures that present a negative picture.

After alleging that the VC was having difficulties in its recruitment, Mr. Greene goes on to point out, in a confidential comment, that "Recruitment statistics should be avoided since they are based on a relatively small number of reports of dubious reliability. Moreover, any use of recruitment figures might well be used by our critics to question the reliability of our estimates on Communist order of battle, a subject which almost certainly will soon cause us considerable public relations problems."

^{24a}"It is significant that the enemy has not won a major battle in more than a year. In general, he can fight his large forces only at the edges of his sanctuaries . . . His Viet Cong military units can no longer fill their ranks from the South but must depend increasingly on replacements from North Viet Nam. His guerrilla force is declining at a steady rate. More problems are developing within his ranks."

He concluded by saying, "The enemy has many problems: He is losing control of the scattered population under his influence. He is losing credibility with the population he still controls. He is alienating the people by his increased demands and taxes where he can impose them. He sees the strength of his forces steadily declining. He can no longer recruit in the South to any meaningful extent; he must plug the gap with North Vietnamese. His monsoon offensives have been failures. He was dealt a mortal blow by the installation of a freely elected representative government. And he failed in his desperate effort to take the world's headlines from the inauguration by a military victory." General Westmoreland, "Progress Report on the War in Viet Nam," before the National Press Club, Washington, D. C., Nov. 21, 1967.

^{24b}According to George Allen, pressure was put on CIA by Walt Rostow, Assistant to the President for National Security Affairs, to prepare positive indicators of progress in the pacification program. When Mr. Allen suggested that there were few, he received the reply, "I am amazed at your unwillingness to sup-

of launching an invasion at any time. Intelligence failed, however, to provide a warning that the Soviets had decided to intervene with force." Consequently, President Johnson first learned of the invasion when Soviet Ambassador Dimitri Ustinov told him the White House and told him.

A review of U.S. intelligence performance during the Czech crisis indicates the agencies were not up to the difficult task of divining Soviet intentions. We knew Soviet capabilities, and that the tactical decision to invade might leave only hours of advance warning. The CIA, DIA, and NSA should have been prepared for lightning-quick reaction to Soviet military moves.

Czech radio broadcast news of the invasion at 8:50 p.m., Washington time. CIA translated and transmitted its reports of invasion to Washington at 9:15 p.m. By that time, President Johnson had already met his appointment with the Soviet Ambassador.

U.S. technical intelligence learned of the Soviet invasion several hours before the information did not reach Washington until after the Czech radio message. The CIA later concluded that the information "might have made a difference" in our ability to provide the tactical warning.

One alarming failure of intelligence prior to the invasion occurred during the first two weeks in August, when U.S. intelligence could not locate a Soviet combat formation, which had moved into northern Poland. Director Helms later admitted he was not "happy about those two weeks" when he could not locate the Soviet troops.

Information from technical intelligence, which would have been helpful, was not available until days later. Clandestine reporting in the previous weeks had been so slow to arrive it proved of little value to current intelligence publications.

Director of Central Intelligence, Richard Helms, reported to the President's Foreign Intelligence Advisory Board in October, 1968, that the intelligence record of failing to detect the actual attack "disappoints me." The Director provided reassurance that the record would have been better "if West Germany had been a target rather than Czechoslovakia."

In 1971, a Presidential Commission reported to President Nixon that its review of U.S. ability to respond to sudden attack had found serious weaknesses. The Pentagon was directed to improve its warning system. Improvement to the very best pos-

sible degree is, of course, the minimum acceptable standard. There will be no more important area for Congressional oversight committees to explore thoroughly.

3. The Mid-East War: The System Breaks Down

The Mid-East war gave the intelligence community a test of how it can perform when all its best technology and human skills are focused on a known world "hot spot." It failed.

On October 6, 1973, Egypt and Syria launched a major assault across the Suez Canal and Golan Heights against a stunned Israel. Although Israel eventually repelled the attack at a cost of thousands of lives, the war's consequences cannot be measured in purely military terms.

For Americans, the subsequent U.S.-Soviet confrontation of October 24-25, 1973, when the Soviets threatened to unilaterally intervene in the conflict, and the Arab oil embargo are reminders that when the Middle East has a direct impact on our own national interest.

The Committee's analysis of the U.S. intelligence performance in this crisis confirms the judgment of an intelligence community post-mortem that "the principal conclusion concerning the intelligence of hostilities... was quite simply, obviously, and unequivocally wrong. Even after the conflict had begun, we did not adequately monitor the source of events."

The important question is what went wrong? The last released National Intelligence Estimate before the October War was published five months earlier in May 1973 during a particularly bad period in Arab-Israeli relations. That estimate addressed the likelihood of war "in the next few weeks." No long-range view was presented, and the crisis soon passed.

The intelligence report concerned with foreign policy-military issues was a May 31, 1973, Bureau of Intelligence and Research (INR) memorandum to Secretary of State Rogers. The authors reasoned correctly that Egypt's President Sadat, for political reasons, would be strongly tempted to resort to arms if diplomacy proved fruitless. Accordingly, the report concluded, the "resumption of hostilities in autumn will become a better bet than even bet" should the time

digest more than a small portion of them. Even fewer analysts were qualified by technical training to read raw NSA traffic. Costly intercepts had scant impact on estimates.

These reports lacked visibility and prestige to reach a degree that when, two days before the war, an NSA briefier suggested to General Daniel Graham of CIA that unusual Arab movements suggested imminent hostilities, Graham retorted that his staff had had a key "ho-hum" day in the Middle East.

A military analyst claimed that if he had only seen certain NSA reports, which were so "sensitive," they had not been disseminated until after the war began, he would have forecast hostilities.²⁹²

There was testimony that Dr. Kissinger's secrecy may also have thwarted effective intelligence analysis. Kissinger had been in close contact with both the Soviets and the Arabs throughout the pre-war period. He, presumably, was in a unique position to pick up indications of Arab dissatisfaction with diplomatic talks, and signs of an ever-increasing Soviet belief that war would soon break out. When the Committee was denied its request for high-level reports, it was unable to learn whether Kissinger elicited this information in any usable form.

It is clear, however, that the Secretary passed no such warning to the intelligence community.²⁹³ The Committee was told by high U.S. intelligence officials and policy-makers that information from high-level diplomatic contacts is of great intelligence value as an often-reliable indicator of both capabilities and intentions. Despite the obvious usefulness of this information, Dr. Kissinger has continued to deny intelligence officials access to notes of his talks with foreign leaders.

The timing of the Arab attack, the War Committee—which is responsible for alerts—met to assess the likelihood of major hostilities. It concluded that no major coordinated offensive was in the air.²⁹⁴ Perhaps one of the reasons for this was that some participants were not "cleared" for all intelligence data, so the subject and its implications could not be fully discussed.

The entire system had malfunctioned. Massive amounts of data had proven indigestible by analysts. Analysts, reluctant to raise false alarms and lulled by anti-Arab biases, ignored clear warnings. Top-level policy-makers declined to share perceptions gained from talks with key Arab and Soviet diplomats during the critical period. The fact that Israeli intelligence

assesses. That is to say, the analysts, in reading to indicators which could be interpreted in themselves as portents of hostile Arab actions against Israel, sought in effect to reassure their audience that the Arabs would not resort to war at least not deliberately. (Emphasis in original.) [CIA's Post-Mortem, page 3.]

The CIA's Post-Mortem at 13 characterizes this Handbook and analytic preconceptions: "No preconceptions seem to have had a greater impact on analytical attitudes than those concerning relative Arab and Israeli military prowess. The June War was frequently invoked by analysts as proof of fundamental and perhaps permanent weaknesses in the Arab forces and, inferentially, of Israeli invincibility. The Arabs, despite the continuing acquisition of modern weapons from the Russians, remained about as far behind the Israelis as ever." At page 14 the Post-Mortem continues: "There was, in addition, a fairly widespread notion based largely (though perhaps not entirely) on past performances that many Arabs, as Arabs, simply weren't up to the demands of modern warfare and that they lacked understanding, motivation, and probably in some cases courage as well. These judgments were often alluded to in conversations between analysts...."

The draft CIA Post-Mortem states that NSA SIGINT Summaries probably did not convey the full significance of these technical indicators to the reader. The conclusion of all intelligence officials interviewed by the Committee staff was unanimous: the National Security Agency products—particularly raw products—are difficult to understand. The CIA's Post-Mortem, page 9, states the problem with NSA products as seen by Middle East intelligence analysts: "Two particular problems associated with SIGINT should be mentioned here: (1) Certain highly classified and specially handled categories of COMINT reached their consumers only several days after intercept, a circumstance which perhaps had unfortunate effects; (2) SIGINT reporting is very voluminous; in a typical non-crisis week, hundreds of SIGINT reports on the Middle East cross the desk of the area specialist in the production office. Moreover, partly because of the requirements levied on it by a wide variety of consumers, NSA issues most SIGINT reports (not merely ELINT) in very technical language. SIGINT can thus challenge the ingenuity of even the most experienced, all-source analyst searching for meaning and

Sic impasse continued
By September 30, 1975—less than a week before the attack—INR had lost "the wisdom of the Sphinx". By then, all U.S. intelligence agencies agreed that the political climate in the Middle East was not conducive to a major war. Intelligence consumption was so low that hostilities were not likely.²⁹
The next question is why this happened.
Analytical bias was part of the problem.^{29a} In the summer of 1973 the Defense Intelligence Agency (DIA), CIA, and INR all flatly asserted that Egypt was incapable of a major assault across the Suez Canal. Syria, they said, was not much of a threat either, despite recent acquisitions of sophisticated Soviet . . . missile systems and other material.
One reason for the analysts' optimism can be found in a 1971 CIA handbook, in a passage reiterated and reinforced in discussions in early October, 1973. The Arab fighting man, it reported, "lacks the necessary physical and cultural qualities for performing effective military services." The Arabs were thought to be so clearly inferior that another attack would be irrational and, thus, out of the question.
No doubt this attitude was not far in the background when CIA advised Dr. Kissinger on September 30, 1975, that "the whole thrust of President Sadat's activities since last spring has been in the direction of bringing moral, political, and economic force to bear on Israel in tacit acknowledgment of Arab unpreparedness to enter war."
That analysis is quite surprising, in light of information acquired during that period, which indicated that imminent war was a distinct possibility. By late September, for example, CIA had acquired vital evidence of the timing and warlike intentions of the Arabs. The source was disbelieved for reasons still unclear.
There were other positive indications. In late September, the National Security Agency began picking up clear signs that Egypt and Syria were preparing for a major offensive. NSA information indicated that [a major foreign nation] had become extremely sensitive to the prospect of war and concerned about their citizens and dependents in Egypt. NSA's warning escaped the serious attention of most intelligence analysts responsible for the Middle East.^{29b}
The book may well lie in the system's heart: NSA intercepts of Egyptian-Syrian war preparations in this period were so voluminous—an average of thousands of reports each week—that few analysts had time to

gence, to which the U.S. often deferred in this period, had been wrong was small consolation.
Performance did not measurably improve after the war's outbreak, when the full resources of the U.S. intelligence community were focused [there].
The Defense Intelligence Agency, having no military contingency plan for the area, proved unable to deal with a deluge of reports from the war zone, and quickly found itself in chaos. CIA and INR also engulfed Washington and each other with situation reports, notable for their redundancy.
Technical intelligence-gathering was untimely, as well as indiscriminate. U.S. national technical means of overhead coverage of the Middle East, according to the post-mortem, was "of no practical value" because of time problems. Two overflight reconnaissance missions, on October 13 and 25, "straddled the most critical phase of the war and were, therefore, of little use."³⁰
The U.S. failure to accurately track war developments may have contributed to a U.S.-Soviet confrontation and troop alert called by President Nixon on October 24, 1973.³¹
A second intelligence community post-mortem, the existence of which was not disclosed to the Committee until after its hearing,^{31a} reported that CIA and DIA almost unquestionably relied on overly-optimistic Israeli battle reports. Thus misled, the U.S. clashed with the better-informed Soviets on the latter's strong reaction to Israeli cease-fire violations. Soviet threats to intervene militarily were met with a worldwide U.S. troop alert. Poor intelligence had brought America to the brink of war.
Administration witnesses assured the Committee that analysts who had prepared inquiry into the case had been released.^{31b} The broader record suggests, however, that the intelligence system faults have survived largely intact. New analysts will continue to find themselves harassed and deluged with largely equivocal, unreadable, or unusable data from CIA, DIA, INR, and the collection-conscious NSA. At the same time, they can expect to be cut off, by top-level policy-makers, from some of the best indicators of hostile intentions.
Footnotes:
²⁹ "If analysts did not provide forecasting, what did they offer in its stead? Instead of warnings, the community's analytical effort in effect amounted to

patterns in a mountain of material."
³⁰ From the Draft, CIA Post-Mortem: "If the information contained in the NSA messages had been available prior to the time of the outbreak of hostilities, we could have clearly predicted that [a foreign nation] knew in advance that renewed hostilities were imminent in the Middle East." This particular type of NSA-acquired intelligence was delayed "a minimum of ten days."
^{30a} Among such reports on Soviet and Arab attitudes were "The Secretary Afternoon Summary," 27 Sept., 1973 which reported an intelligence finding that a high Arab official "has said that Kissinger's statement before the Senate Foreign Relations Committee, that U.S. policy in the Middle East remains the same, destroyed the recent Egyptian hope aroused by President Nixon's comment that the U.S. is partial neither to the Arabs or to Israel."
^{30b} "The Watch Committee met in special session on 0900-10 October 1973 to consider the outburst of Israeli-Arab hostilities and Soviet actions with respect to the situation."
"We can find no hard evidence of a major, coordinated Egyptian/Syrian offensive across the Canal and in the Golan Heights area. Rather, the weight of evidence indicates an action-reaction situation where a series of responses by each side to perceived threats created an increasingly dangerous potential for confrontation. The current hostilities are an entirely a result of that situation although we are in a position to clarify the sequence of events. It is possible that the Egyptians or Syrians, particularly the latter, may have been preparing a raid or other small-scale action." Special Meeting of the Watch Committee, Oct. 7, 1973.
³¹ "We do not know whether, in fact, these differing appreciations contributed to the development of a confrontation between the U.S. and U.S.S.R. during the last three days of the crisis (24-26 October 1973). This seems to be a real possibility. And it is clear in any event that in certain crises and under certain circumstances an accurate view of the tactical military situation can be of critical importance to decision-makers." Also: "If U.S. decision-makers had had a more accurate view of the tactical situation around Suez between 21 and 25 October, they might have had better insight into why the Soviets reacted as they did to the Israeli violations." Ibid. . . .
^{31a} The second post-mortem . . . was not given to

any Congressional Committee, even those who were told of the first post-mortem.

³¹²Three DIA officials were removed from their positions there were no changes at the CIA, INR, or NSA. Community analysts interviewed by Committee staff all agreed the reassignments involved internal DIA controversies more than any effort to revamp the agency after the Middle East War.

4. Portugal: The U.S. Caught Napping

Do our intelligence services know what is going on beneath the surface of allied nations that are not making headlines? Quiet Portugal exploded in 1974, leaving serious questions in its aftermath.

When a group of left-leaning Portuguese junior military officers ousted the Caetano regime on April 25, 1974, State Department officials represented to

On October 26, 1973, the Defense Attache in Lisbon reported to DIA headquarters in the Pentagon rumors of a "coup plot," and serious discontent among Portuguese military officers.

On November 8, 1973, the attache reported that 860 Portuguese Army Captains had signed a petition protesting conditions.³¹⁰ The attache quickly concluded these dissidents had no intentions of revolution. Nevertheless, the fact that over 800 military officers felt deeply enough to risk retribution was a good indication of the profound social revolution which Portugal faced.

The record does not suggest that the attache attempted to get to know these junior officers' understand their views, or even record their names. Nor had anyone in Washington assigned him the task of searching for signs of social and political unrest in the Portuguese military. One reason for this was that the Director of Attache Affairs was not allowed to assign duties to attaches. Assignments were done elsewhere, in an unbelievable demonstration of con-

guese Community movement with attaches' supposed military contacts.

The National Intelligence Officer (NIO) for Western Europe did attempt an analysis. A draft memorandum on "Trends in Portugal, titled 'Cracks in the Facade,'" had been in preparation for nearly a month, and was almost complete when the NIO could guess it had to be re-written. The document itself, despite its title, was not attuned to the real causes of intense discontent which produced a leftist military revolt.

That same National Intelligence Officer testified that he had some twenty-five European countries to monitor, with the help of only one staff assistant. NIO's do not have command authority over CIA's intelligence or operations directorates. They cannot order that papers be written, that staffers be detached from the current intelligence office to work on an in-depth estimate. They cannot instruct clandestine operations to collect certain types of information. Nor will the NIO always be informed of covert actions that may be underway in one of his countries.

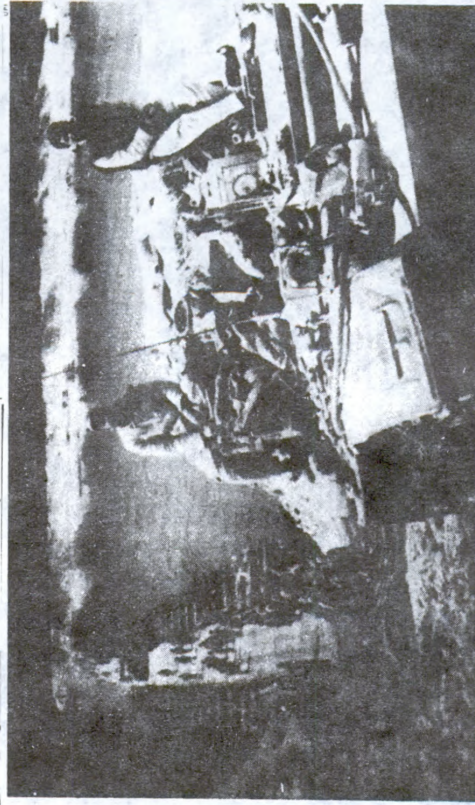
The most disturbing testimony before this Committee was official satisfaction with intelligence prior to the Portuguese coup. The Director of Attache Affairs told the Committee that intelligence performance had been "generally satisfactory and responsive to requirements." The National Intelligence Officer for Western Europe said intelligence reports had described "a situation clearly in process of change, an old order coming apart at the seams."³¹¹

However, both officials quickly admitted under questioning that the attaches had not, in fact, been very aggressive. Nor had any intelligence document warned when and how the old order was "coming apart at the seams." Without access to intelligence reports, this Committee might have believed official claims that the system was functioning well.

Footnotes:

³¹⁰Interview with Dennis Clift, Senior Staff Member, National Security Council, by G. Rushfort, Oct. 3, 1975, copy on file with Sel. Comm. on Intell. Mr. Clift stated there was no National Security Council effort to levy requirements on the intelligence community, nor was there any National Security Council study memorandum addressed to Portugal.

³¹¹Testimony of William Hyland before the Committee. "Even a cursory review of the intelligence record indicates there was no specific warning of the



Egyptian tanks cross the Nile, October, 1973: American intelligence said it couldn't be done.

the New York Times that Washington knew those who were behind the coup well. State indicated that we were not surprised by the coup, and that no significant changes in Portugal's NATO membership were expected. Nothing could have been further from the truth.

The Committee has reviewed documents which show that the U.S. intelligence community had not even been asked to probe deeply into Portugal in the waning months of the Caetano dictatorship.³¹⁵ As a result, policy makers were given no real warning of the timing and probable ideological consequences of the coup, despite clear and public indications that a political upheaval was at hand.³¹⁶

The State Department's Bureau of Intelligence and Research had not analyzed events in Portugal in the month before the April coup. In retrospect, four warning signals, beginning in late February and continuing through mid-March, 1974, should have sparked "speculation at that time that a crisis of major proportions was brewing," according to the Director of Intelligence and Research, William Hyland. All four events were reported in the American press:

1. The publication in February, 1974, of General Antonio de Spínola's controversial book criticizing Portugal's African colonial wars, which unleashed an unprecedented public storm.
2. The refusal of General Spínola and the Armed Forces Chief of Staff, Francisco Costa Gomes, to participate in a demonstration of military unity and support for the Caetano dictatorship.
3. An abortive coup, in mid-March, when an infantry regiment attempted to march upon Lisbon. This was followed by the subsequent dismissal of Spínola and Costa Gomes from their commands.
4. A period of rising tensions, the arrests of leftists, and a purge of military officers following the last three developments.

The intelligence community, however, was too preoccupied to closely examine the Portuguese situation. Those responsible for writing current intelligence publications had deadlines to meet, meetings to attend, and relatively little time to speculate on developments in the previously sleepy Caetano dictatorship.³¹⁸

The Committee's investigation indicates there were other, earlier warning signs which might have sparked some intelligence interest. Again, these indications of deeper unrest were not subjected to close analysis.

fusing and inefficient administration.³²¹

Also in November 1973, the attaché attended a social gathering at the home of a retired American officer where he heard discussion of right-wing Spanish and Portuguese countercoup plans, should "extremists" overthrow the Caetano government. Neither the identities of the counter-plotters nor of the "extremists" were reported by the attaché. No further reference to this report was found in a review of subsequent attaché activities prior to the April coup.

In February 1974, the attaché forwarded information from December 1973, on the Portuguese government response to a petition of complaints signed by over 1500 junior military officers.³²² There was no effort to identify the leaders of the petition campaign or to contact any of the signers. After the coup, high CIA officials would complain of the lack of in-depth geographic reporting from the attaché office.

A review of all Defense Attaché reports in the months prior to the coup indicated substantial delays in forwarding reports to Washington. It even took a month for the attaché to send Washington the Spínola book which unleashed the public storm when it was published in February.

Twice, Defense Intelligence Agency headquarters in Washington wrote the attaché office in Lisbon urging the six officers there to be more aggressive, to travel more and frequent the diplomatic party circuit less. Only the most junior attaché, a Navy lieutenant, made an attempt to probe beyond the obvious.

The Committee was also told that a serious problem in DIA is a tendency to reward senior officers, nearing the ends of their careers, by assigning them to attaché posts. Not only were these officers often untrained and unmotivated for intelligence duties, but the Director of Attaché Affairs testified that he was powerless to assign substantive duties to the attaches in any case.

The Committee did not have the opportunity to review raw CIA reports during the six months prior to the coup. CIA officials who relied on these reports told this Committee that the CIA Station in Lisbon was so small, and so dependent upon the official Portuguese security service for information, that very little was picked up. In fact, attaches were in a better position than CIA to get to know the Portuguese military. There is no indication that attaches and the Chief of Station attempted to pool their resources and combine CIA's knowledge of the Portu-

coup of April 25, 1974 in Portugal. As far as the Bureau of Intelligence and Research was concerned, our last analytical reporting was in late March and we drew no conclusions that pointed to more than a continuing struggle for power but short of a military revolt." Comm. Hearings, October 7, 1975.

Defense Attaché report from Lisbon to the Defense Intelligence Agency: "These younger officers are not disloyal and desire to serve Portugal as military officers and have no intention of revolution. They are patriots who want to make changes for the improvement of the P.A. [Portuguese Army—editor's note] and Portugal."

Defense Attaché report also commented on the Spínola appointment as Deputy Chief of Staff, Armed Forces: "Although there are some political reasons in back of this appointment, it is reported that he will concern himself mainly with personnel and logistics in the Metropole." Defense Attaché report, Feb. 6, 1974.

Testimony of Keith Clark and Samuel V. Wilson. Only William Hyland, Director of INR, testified without providing that the system had not functioned well in the Portugal crisis.

5. India: Priorities Lost

How well does U.S. intelligence keep track of non-military events that affect our foreign policy interests? Not very well, if the first nuclear test in the Third World is any indication.

The intelligence community estimated, in 1963, that India was capable of conducting a nuclear test, and probably would produce a nuclear device within the next few years. In 1972, a special estimate said the chances are roughly even that India will conduct a [nuclear] test at some time in the next several years and that it will be a peaceful explosion.

DIA, in reports distributed only within the Joint Chiefs of Staff, had stated since 1971 that India might already have a nuclear device. However, when India exploded a nuclear device on May 18, 1974, U.S. intelligence was caught off-guard. As the CIA's post-mortem says of the community's surprise: "This failure denied the U.S. Government the option of considering diplomatic or other initiatives to try to prevent this significant step in nuclear proliferation." Only one current intelligence article was published in the six months before the May explosion.

article, by DIA stated for the first time that India might already possess such a device. Perhaps one reason the article did not provide more debate and initiative was the title: "India: A nuclear weapons program will not likely be pursued in the near term." In 1972, U.S. intelligence had picked up 26 reports that India would soon test a device, or that she was capable of doing so if the government made the decision to proceed. There were only two reports on the subject from August 1972, to May 1974, when the device was exploded. Neither was pursued with what the CIA can claim was a "real follow-up."

An April 17, 1974 report indicated that India might have already conducted an unsuccessful nuclear test in the Rajasthan Desert. The CIA did not disseminate this report to other agencies, nor did CIA officials pursue the subject.

The Director of Central Intelligence had established the bureaucratic device of "Key Intelligence Questions" in 1974. Although nuclear proliferation was on the list, few officials outside the upper reaches of the bureaucracy expressed much interest. The CIA's general nuclear developments priority list did not address India, and the military attaches received no clear instructions on nuclear matters. Nevertheless, previous estimates on India had identified "gaps" in our information.

After India exploded the nuclear device in May 1974, Director Colby wrote De Kessinger to say he intended to mount a more aggressive effort on the nuclear proliferation problem.

One of several justifications for national technical means of overhead coverage over India in the two years prior to May 1974, was the nuclear test issue. However, the Intelligence Community technical analysis were never asked to interpret the data. The CIA's post-mortem stated, in effect, the system had been tasked to obtain data, but the analysts had not been asked to examine such data. After the explosion, the analysts were able to identify the test location, from pre-test data.

Following the failure to anticipate India's test, the United States Intelligence Board agreed to hold one committee meeting a year on nuclear proliferation. Interagency "coordinating" mechanisms were established. Teams of experts traveled to various countries to impress on American embassy personnel the importance of the proliferation threat. Analysis once again were encouraged to talk to each other more.

dence that the Ioannides-Makarios relationship was reaching a critical stage.

There would soon be several tactical indications that a coup was in the works. On June 7, 1974, the National Intelligence Daily warned that Ioannides was actively considering the ouster of Makarios if the Archbishop made an "extremely provocative move."³⁵⁰ On June 29, intelligence officials reported that Ioannides had again told his CIA contact nine days before that if Makarios continued his provocation, the Greek would have only two options: to write-off Cyprus, with its sizeable Greek majority, or eliminate the Archbishop as a factor.

On July 3, 1974, Makarios made that "extremely provocative move," by demanding the immediate withdrawal of a Greek National Guard contingent on Cyprus. The ultimatum was delivered in an extraordinary open letter to the Greek government, accusing Ioannides associates of attempting his physical arrest as political liquidation.³⁵¹

On June 28, 1974, Secretary Kissinger, responding to alarms sounded by State Department desk officers, approved a cable to U.S. Ambassador Henry J. Tasca in Athens, instructing that he personally tell Ioannides of U.S. opposition to any adventure on Cyprus.³⁵² The instruction was only partially heeded.

Tasca, assured by the CIA station chief that Ioannides would continue to deal only with CIA and not sharing the State Department desk officer's alarm, was content to pass a message to the Greek leader indirectly.

Tasca's colleagues subsequently persuaded Secretary Kissinger's top aide, Joseph Sisco, that a general message passed through regular government channels would have sufficient impact. The Ambassador's Committee staff that Sisco agreed it was unnecessary for Tasca himself to approach Ioannides, who had no official government position. That interpretation has been vigorously disputed. It is clear, however, that the Embassy took no steps to under-score for Ioannides the depth of U.S. concern over a possible Cyprus coup attempt.

This episode of exclusive CIA access to Ioannides, Tasca's indications that he may not have seen all important messages to and from the CIA, and Ioannides' suggestions of U.S. acquiescence, and Washington's well-known coolness to Makarios, have led to public speculation that either U.S. officials were inattentive to the reports of the developing crisis

were afflicted both with a past history of false alarms, and with the rigid notion, unsupported in fact, that foreign leaders invariably act "rationally." In the Cyprus crisis, as in the Mid-East, analysts were deluged with unreadable and redundant data subsequent to the initial intelligence failure.³⁵³ Still, given the ample indications that Makarios had sufficiently aroused Ioannides' ire, these analytical quirks should not have prevented a correct interpretation of events.

There appear to have been collection failures in this period, although additional evidence could probably not have overcome the analytical deficiencies that caused erroneous conclusions. For example, CIA personnel had been instructed by the U.S. Ambassador not to establish contacts within the Turkish minority, and to obviate any allegations of collusion with the anti-Makarios EOKA-B movement. They were told to seek intelligence on EOKA-B by indirect means, rather than through direct contact with members of that organization. Finally, signals intelligence in the area was focused elsewhere and even after the coup was not a significant factor.³⁵⁶

Since the coup inevitably led to the two Turkish invasions and the Greek-Turkish confrontation, the performance of intelligence in predicting military hostilities after the coup is both less important and unremarkable in its successes.

Along with most newspaper articles of the time, U.S. intelligence concluded that Ioannides' installation of Nicos Sampson, notoriously anti-Turk, as Cypriot President insured a Turkish invasion of the island. Despite prominent stories in Turkish newspapers and undisputed troop movements at the coast, DIA did not predict the invasion until literally hours before Turkish forces hit the beaches on July 20, 1974. A National Intelligence Officer's report had picked July 20 as a likely invasion date, but was never disseminated to the intelligence community.³⁵⁸

Perhaps flushed by its "success" in calling the first Turkish invasion just after the Turkish press did, U.S. intelligence appeared to lose interest, in the belief that the crisis was over. Thus, there was no real forewarning that the Turkish forces would launch an even more ambitious invasion on August 14, resulting in the capture of fully one-third of the island.

In terms of both its immediate³⁶⁰ and long-range consequences the shortcomings of U.S. intelligence failure during the Cyprus crisis may have been the most damaging to intelligence performance in recent years.

The missing element, as the bureaucracy reshuffled its priorities after the Indian failure, is quite simple: the system itself must be reformed to promote anticipation of, rather than reaction to, important world events.

6. Cyprus: Failure of Intelligence Policy

Cyprus presented a complex mix of politics, personalities, and NATO allies. Unfortunately, a crisis turned to war, while intelligence tried to unravel events—and America offended all participants.

On the morning of July 15, 1974, Greek Cypriot General Dimitrios Ioannides and his military forces on Cyprus overthrew the elected government of Archbishop Makarios. Five days later, Turkey invaded the island, ostensibly to protect the Turkish minority there and to prevent the Greek annexation long promoted by the new Cyprus leadership. Unsatisfied with its initial military success, Turkey renewed its offensive on August 14, 1974.

The failure of U.S. intelligence to forecast the coup, despite strong strategic and tactical warnings, may be attributed to several factors. First, reporting from the U.S. Embassy in Athens, in part due to CIA's weak access to Ioannides, the general analyst's assumption of rational behavior, and analysts' reluctance to raise false claims of an impending crisis.

The failure to predict the coup is puzzling in view of the abundance of strategic warnings. When Ioannides received power from George Papadopoulos in November, 1974, analysts concluded that relations between Greece and Makarios were destined to worsen. Ioannides' hatred of Makarios, whom he considered pro-Communist or worse, has been described as having "bordered on the pathological."

Moreover, Ioannides was seen as a stumbling block to Ioannides' hopes for peace. Observers agreed that a serious confrontation was only a matter of time. By spring of 1974, that confrontation would appear imminent, with intervening lulls. Each time the brink elicited dire warnings to policy officials from Near East desks in the State Department. However, the nuances of these events, indicating a gathering of storm clouds, were largely lost on analysts as their attention remained focused on the Greek-Turkish clash over mineral rights in the Aegean. Cyprus remained a side issue despite growing evi-

or simply allowed it to happen by not strongly, directly, and unequivocally warning Ioannides against it.³⁴⁶

Due to State Department access policies, the Committee was unsuccessful in obtaining closely-held cables to and from the Secretary of State during this period including a message the Secretary sent to Ioannides through the CIA the day after the coup. Accordingly, it is impossible to reach a definitive conclusion.

On July 3, 1974, a CIA report stated that an individual, later described as "an untested source," had passed the word that despite new aggressiveness on Makarios' part, Ioannides had changed his mind: there would be no coup after all. For reasons still unclear, the CIA report was embraced and heeded until July 15, the day of the coup. The Intelligence Community post-mortem appears to have concluded that the "tip" was probably a ruse.

Ioannides' dubious change of heart went virtually unquestioned despite Makarios' open letter, despite further ultimatums from the Archbishop to remove the Greek officers, and despite the en masse resignations of three high-level Greek Foreign Ministry officials known to be soft-liners on Cyprus. In this setting, the grotesquely erroneous National Intelligence Bulletin of July 15, 1974, is not surprising, nor are Ambassador Tasan's protestations that he saw no coup on the horizon.

Almost at the moment Ioannides unleashed his forces, a National Intelligence Bulletin was reassuring intelligence consumers with the headline: "Ioannides is taking a moderate line while he plays for time in his dispute with Archbishop Makarios."

Results of the events triggered by the coup included: thousands of Cypriot casualties and refugees, a narrowly-averted war between NATO allies Greece and Turkey, a tragic worsening of U.S. relations with all three nations, and the death of an American Ambassador. U.S. intelligence must be accorded a share of the responsibility.

The intelligence community somewhat generously termed its performance during the Cyprus crisis as "a mixture of strengths and weaknesses." The Committee's conclusion, after an analysis of the record, is less sanguine. Intelligence clearly failed to provide adequate warning of the coup, and it performed inadequately once the crisis had begun.

The analytical failure in the Cyprus crisis brings to mind several parallels with the 1973 Middle East debacle. In both cases, analysts and policymakers

Footnotes:

³⁴⁶Former intelligence officials have described to this Committee the difficulties encountered by those who must report from an area which has frequent and intense crises. "After a while, Washington officials get tired of hearing about impending crises from your area and it actually gets embarrassing to report them." That observation gained credence when witnesses from the Department of State jokingly referred to the number of times Cypriot Desk officers had predicted coups. Interview with intelligence official by F. Kirschstein, Sept. 29, 1975, copy on file with Sel. Comm. on Intell.

³⁴⁷The June 7 National Intelligence Daily was based on a June 3 Field Intelligence Report which stated that "Ioannides claimed that Greece is capable of removing Makarios and his key supporters from power in twenty-four hours with little if any blood being shed and without EOKA assistance. The Turks would quietly acquiesce to the removal of Makarios, a key enemy . . . Ioannides prayed for some unexpected favorable gift from heaven. Ioannides stated that if Makarios decides on some type of extreme provocation against Greece to obtain a tactical advantage, he (Ioannides) is not sure whether he should merely pull the Greek troops out of Cyprus and let Makarios fend for himself or remove Makarios once and for all and have Greece deal directly with Turkey over Cyprus' future." That report has been confirmed by former CIA Athens officials interviewed by staff. Interview with CIA operations officials, by J. Boos and G. Rushford . . . copy on file with Sel. Comm. on Intell.

³⁴⁸The letter reads in part: "I have many times asked myself why an unlawful and nationally harmful organization . . . is supported by Greek officers . . . The Greek officers' support for EOKA-B constitutes an undeniable reality . . . I am sorry to say, reaching as far as Athens, it is from there that the tree of evil, the bitter fruits of which the Greek Cypriot people are tasting today, is being fed and maintained and hoped to grow and spread. In order to be absolutely clear, I say that cadres of the military regime of Greece support and direct the activity of the EOKA-B terrorist organization. This also explains the involvement of Greek officers of the National Guard in illegal activities, conspiracy and other inadmissible situations . . . You realize, Mr. President, the sad thoughts which have been

prosecuting and tormenting me following the arrest of the men of the Government of Greece are incessantly repeating conspiracies against me and what is worse, are dividing the Greek Cypriot people and pushing them to confrontation through civil strife. I have more than once been hurt, and some cases I have almost touched a hand involuntarily extending from Athens and seeking to liquidate my human existence . . . Makarios went on to ask for the immediate withdrawal of all Greek officers in the Cypriot National Guard.

337 The State cable, drafted by John Day, of the Greek desk, was dispatched to the Embassy in Athens under Undersecretary Joseph Sisco's signature. It stated in part: "We share concerns of Athens and Nicosia regarding gravity of relationship between Government of Greece and Government of Cyprus. From various reports, it is evident that Ioannides is seriously considering way to topple Makarios from power. . . . In our view effort to remove Makarios by force contains unacceptable risks of generating chaos eventually causing Greco-Turk confrontation; involving Soviets in Cyprus situation; and complicating developing U.S.-Soviet detente."

"We know that Ioannides has long been obsessed with issue of communism both in Greece and in Cyprus and that his dislike for Makarios has bordered on the pathological. Until recently, our impression has been that he preferred to play for time on Cyprus problem until he had consolidated his position in the internal Greek context. Now, however, he apparently feels that Makarios is seeking to take advantage of Greek-Turkish tensions and the Greek regime's domestic difficulties to reduce Greek influence on the island and that this effort is a personal challenge which he cannot ignore." The cable went on to instruct Ambassador Tasca to personally tell Ioannides that the U.S. opposed any adventure on Cyprus. Department of State cable to Athens Embassy, June 29, 1974.

338 "It is reasonable to ask whether this U.S. action was perceived in Athens as a reflection of the depth of Washington's concern about Ioannides' scheme to oust Makarios. Clearly General Ioannides had much ground to believe that in light of the direct contact he enjoyed with the CIA station, he would have received a stronger, more categorical warning if the U.S. were genuinely exercised about protecting Makarios, whom he regarded as a communist sympathizer."

Cypriot Government is said to have declined to remove these individuals from the island. Interview with Henry J. Tasca, by T. Ross, Sept. 26-27, 1973, copy on file with Sel. Comm. on Intelligence, House of Representatives. Interview with CIA officials by G. Rushford and E. Kirschstein, Oct. 22, 1975, copy on file with Sel. Comm. on Intel.

7. Domestic Internal Security and Counterintelligence

The Intelligence Division of the FBI is divided into two sections: Internal Security and Counterintelligence. The Internal Security Division investigates domestic subversive or extremist groups with the goal of ascertaining whether individuals are violating federal laws.

These investigations are costly, in monetary terms and in terms of personal privacy. Are they effectively and dispassionately controlled, in keeping with criminal priorities? Are they efficiently terminated when clearly unproductive? Thirty-four years of investigating the Socialist Workers Party and over five years spying on the Institute for Policy Studies provide some examples of disturbing answers.

a. Institute for Policy Studies

The FBI Manual of Instructions allows preliminary investigations to be opened on groups espousing extremist philosophies. In these investigations do not demonstrate reasonable likelihood of uncovering criminal violations, the Manual states that they should be terminated within 90 days.

In 1968, the FBI saw sufficient connection between the Institute for Policy Studies (IPS) and the Students for a Democratic Society (SDS) to open a preliminary investigation of IPS.

The investigation was not terminated after an initial 90-day period, even though it had turned up no evidence that IPS members or their associates were violating federal laws. Six months later, at the end of a vigorous nine-month investigation of IPS, the Washington field office reported the results as "negative."

The investigation was destined to continue for five more years.

The investigation had been based on an SDS confession. During the investigation, however, FBI had received information from a source, advising "that, in general, the IPS is not well thought of by the hard-core SDS leaders because members of the IPS are not activists" except for one IPS leader considered sympathetic with SDS objectives. The FBI was not discouraged by the loss of its investigative base, and went ahead reporting unrelated matters. One report, for example, described IPS as "a non-profit, non-taxable institute which studies programs to present policies." The same report noted the fact that "IPS educational curriculum centers on topics which are critical of the present U.S. system . . ."

In January, 1971, the Bureau continued reporting non-criminal matters, such as the fact that the Institute "though small . . . exerts considerable influence through contacts with educators, Congress and labor." It is important to remember that the whole probe began with an investigation of alleged contacts between one IPS staffer and an SDS leader. The FBI had effectively reversed the traditional concept of "guilt by association." Instead of a suspect group tainting an individual, the individual had tainted the group.³⁷⁷

An October 1971 Bureau report said of the Institute:

The popular impression of IPS as the "think-tank" of radical United States politics is justified. It has taken and continues to take a major role in the antiwar movement and calls for disarmament. While IPS people see themselves as leaders of radical thought, they would appear to be leaders without a popular constituency.

The same report concentrated on IPS suspicions of FBI surveillance. It stated that "they suspect that they are being watched from the building across the street and from adjacent buildings." The same report went on to say that two members of the Institute had been "observed by a representative of the FBI . . . walking slowly around the block of IPS, sometimes several times, conversing with each other . . . they appear to be conversing in low tones and in a guarded manner."

In August 1972, an alert Bureau agent collected some IPS garbage.

The trash revealed no evidence of criminal conduct. However, eight used typewriter ribbons were found.

"All this leads to one basic conclusion: I believe that strong U.S. representations to Ioannides would have prevented the crisis. This judgment is shared by the rest of the Greek language/area specialists in SE." "Criticisms of United States Policy in the Cyprus Crisis." Internal Department of State memorandum.

363 In the previous Mid-East crisis, many SIGINT reports were too technical to be understood by lay analysts. The Post-Mortem noted: "As in past crises, most of the Customers interviewed complained of the volume of . . . reporting, as well as its frequent redundancy. Many also complained of too little analysis of the facts, too few assessments of the significance of reported developments."

364 Intelligence officials have told our staff that U.S. SIGINT resources were not focused on targets which would have the most relevance to an Athens-Nicosia crisis, i.e., Greek National Guard communications. Emergency reaction SIGINT teams were rushed into the area after the coup and later contributed to some successful intelligence. Interview with Intelligence officials, by F. Kirschstein, Dec. 2, 1975, copy on file with Sci. Comm. on Intell.

365 The NIO responsible for the report which predicted July 20 as the invasion date was preoccupied with the production of a National Intelligence Estimate on Italy which was to be presented at a USIB meeting on the 18th of July. It should also be noted that Cypriot experts within State and CIA were in the process of being shuffled around in a bureaucratic reorganization of area responsibilities. In addition, State Department Washington experts on all three countries concerned, as well as the U.S. Ambassador to Greece, were removed from their posts at one time or another during the crisis.

366 Some days later, Roger Davies, the U.S. Ambassador to Cyprus, was fatally wounded during an anti-American demonstration at the Embassy in Nicosia. Contemporary accounts concluded that Davies was simply struck by a stray bullet. Information made available to the committee suggests that Davies may have been the victim of an assassin.

367 Ambassador Tasca declined to staff a report that EOKA-B had decided to kill either Davies or himself. U.S. intelligence officers have asserted not only that Davies may have been intentionally shot, but also that the identities of individuals firing at the Embassy are also known: The intelligence sources have alleged that the individuals may be officials of the Nicosian police. Despite repeated private U.S. protests, the



A G.I. on Nixon alert October, 1973:
Poor intelligence led "to the brink of war."

Even though there were no signs of crimes, and despite the fact that IPS itself was not suspected of crimes, FBI devoted time and money to the expensive process of reconstructing the documents that had been typed by the ribbon.

Part of the field was intimate sexual gossip. FBI officials told Committee staff, under oath, that personal information, such as sexual activities, is discarded if it does not pertain to a crime. That was not true. Information from the trash retrieval, including the sexual gossip, was incorporated into a number of reports. In each report, the information was attributed to a source who has supplied reliable information in the past.

In 1973 the Washington Field Office reported that the organization [IPS] is fragmented into a wide variety of studies and interests, the vast majority of which appear to be within legal limits."

In 1974, the Washington Field Office concluded that a "paucity of information exists that would support the likelihood of IPS or its leaders to be functioning in violation of federal law." Only then, after five years and no evidence of law-breaking, did the investigation become inactive.

b. Socialist Workers Party

The second example involved the Socialist Workers Party (SWP). The SWP adopted a Declaration of Principles and a Constitution at their founding convention in January 1938. The Declaration of Principles was replete with revolutionary rhetoric of the Marxist Left. The fledgling Socialist Workers Party also swore allegiance to the world-wide organization of Trotsky — the Fourth International.

Nevertheless, the SWP dissolved their allegiance with the Fourth International and rejected this Declaration of Principles on December 21, 1940. In order to comply with the Vothris Act, the FBI maintained that this disassociation with the Fourth International was merely cosmetic. However, the FBI has been unable to prove any illegal relationship between the SWP and the Fourth International.

FBI's failure to uncover illegal activity by this political party is not from lack of effort. SWP has been subjected to 34 years of intensive investigation.

On November 5, 1975, FBI officials testified that the Fourth International itself was a body made up of Marxist elements around the world and enjoyed

no structural power base in the Soviet Union. Significantly, these officials demonstrated no detailed knowledge about the Fourth International. FBI officials did not mention the fact that the Socialist Workers are a legitimate American political party that can run a candidate for President. Equally as important, the FBI has found no evidence to support a federal prosecution of an SWP member, with the exception of several Smith Act violations in 1941. Since that time, not only have there been no further prosecutions against the SWP for any Federal offense, but the portions of the Smith Act under which these earlier convictions had been obtained have been declared unconstitutional.

The investigation, which FBI officials tacitly admit has been conducted partially under the aegis of an unprosecutable statute, has revealed that the SWP is a highly law-abiding group. The SWP has even avoided illegal and potentially violent confrontations with the authorities during any sort of civil protest. Nevertheless, this had no apparent impact on 34 years of unproductive spying.

According to the Presidential candidate of the SWP, Peter Camejo, party members are even forbidden by the SWP to smoke marijuana. The Bureau apparently formulated a philosophy, in this case, to justify their investigation.

Considerable resources have been allocated to compound the error of a continuing unproductive investigation and to back-stop the preconceptions of FBI personnel.

For example, FBI Internal Security investigators committed a massive misallocation to interviewing landlords, employers, fellow employees and family relations of SWP members. The FBI also maintained intensive surveillance of most, if not all, of the SWP's 2500 members.

Americans are often concerned about privacy invasions of domestic security investigations. One-fifth of all investigations initiated by the FBI during the last decade dealt with security matters. The important issue is whether citizens receive a valuable product in the form of anticipatory intelligence which would serve as a deterrent to, and a prevention of, crime. While it is impossible to accurately gauge the deterrent effect of FBI efforts, it is obvious that the FBI failed to anticipate groups dedicated to the overthrow of the existing government and fully committed to violence.⁴⁶



Portugal's General Antonio de Spínola:
How long should it take for a book to cross the ocean?

mance and role within the structure of the intelligence community. The Committee, without reliance on subpoena, attempted in vain to gain access to materials used by and prepared by the Board. After several months of negotiation, the Committee was granted access to a classified Board history, which outlined, but did not specifically enunciate, the kinds of recommendations the Board has made since its inception, and the agendas of the Board's meetings from January 1961 to the present.

For example, present members of the Board whose corporations hold such contracts include William O. Baker, President, Bell Telephone Laboratories; John S. Foster, Jr., Vice-President for Energy Research and Development, TRW; Robert W. Galvin, Chairman and Chief Executive Officer of Motorola Inc.; Edwin H. Land, Board Chairman, Polaroid Corporation; and Edward Teller, Associate Director of Lawrence Livermore Laboratory. In addition, three of the remaining four members have formidable military credentials and affiliations: George W. Anderson Jr., former Chief of Naval Operations; Leo Cherne, member of the Board of Advisors of the Industrial College of the Armed Forces; and Gordon Gray, former Secretary of the Army and Director of the Office of Defense Mobilization.

9. National Security Council Intelligence Committee

The National Security Intelligence Committee has met only twice in four years. Membership consists of the Assistant to the President for National Security Affairs as Chairman, D.C.I. Deputy Secretary of State, Deputy Secretary of Defense, Chairman of the Joint Chiefs of Staff and Under Secretary of the Treasury for Monetary Affairs—editors note. It

met once in December 1971, to organize, and once in August, 1974, to re-organize. It has no permanent staff, other than the NSC Director for Intelligence Coordination, Richard Ober, a CIA detailee and architect of the controversial CHAOS program. There is no indication that the Committee has been effective.

A Working Group is composed of the next lower level of consumers. Although in existence from 1971 to 1974, it apparently did not perform any useful function. This group was revived following the 1974 Intelligence Committee meeting and met seven times thereafter. While Working Group principals assert

The FBI has likewise had a dismal record in the prompt apprehension of fugitives from the New Left underground.³⁷⁰ Domestic intelligence appears to be suffering from a misallocation of resources and effort.

Footnotes:

³⁷⁰One group may taint another group. The FBI initiated investigation of the Vietnam Veterans Against the War because the VVAW had the misfortune of being mentioned favorably by the Communist Party.

³⁸⁰Institute for Policy Studies (IPS) is DASH, RA. On August two three last, [a Special Agent] observed a private trash truck picking up trash from IPS. The truck proceeded to a burning dump, where the trash was abandoned. [The Special Agent] obtained the IPS trash, and information obtained from this source is being assigned symbol number [deleted]. "NITEL Cable to Acting Director, FBI from SAC, WFO, Aug. 8, 1972.

⁴⁰⁰The S.L.A. is an example. The FBI provided staff attorneys with a detailed after-the-fact history of the S.L.A. However, the FBI was apparently unable to anticipate the formation of the group or thwart its initial criminal activities. FBI briefing on Intelligence by [W. Raymond] Wannall, et al., attended by J. B. F. Oliphant and R. Vermeire.

⁴⁰¹Mark Rudd, Abbie Hoffman, et al.

8. President's Foreign Intelligence Advisory Board

In addition to day-to-day bureaucratic efforts to monitor and to improve intelligence, the executive branch has performance review mechanisms like the quasi-public President's Foreign Intelligence Advisory Board (PFIB). The issue is whether such a mechanism is viable and effective.

Staff investigation suggests that reliance on PFIB for oversight responsibility is totally without merit. The Board, admittedly part-time, meets for one- or two-day sessions about six times a year. The Chairman spends about half his time on PFIB affairs. Only two professional staff members support the Board, and both are detailees from the very intelligence agencies they are supposed to oversee.

The meeting and staffing arrangements do not lend themselves to a responsible analysis and review of massive and complex intelligence programs. **It is said**

collection programs. However, the Committee denied access to these and other periodic PFIB reports, is unable to determine whether the Board has been functioning meaningfully.⁴⁰⁰

Two important and limiting factors shed light on the role and performance of the Board. The Board cannot establish or even oversee policy, but is limited to advising the President with respect to objectives and conduct of the foreign intelligence and related activities. The Board's effectiveness also is limited by the interest and confidence of the President, and this has varied considerably throughout the five Administrations of the Board's existence.

The problems do not end there. Board members are chosen for distinguished careers in government, academia, and the business world. Not surprisingly, members of PFIB, whose principal functions include advice on research and development goals, are typically affiliated with firms holding lucrative intelligence and defense contracts.⁴⁰⁰

There are no indications that a PFIB member has ever improperly profited from his Board service. However, after searching Board records at the request of

Committee staff, a PFIB spokesman stipulated that there are no conflict-of-interest regulations applicable to its members. Likewise, there were no regulations covering the expense and confidential contracts they assess and review. Instead, members are provided, on their appointment, with the "Standards of Conduct for the White House Staff."

There are obviously difficult policy problems in gathering a group of distinguished and knowledgeable citizens and, at the same time, insuring that the Board's activities and judgments are entirely beyond reproach.

The part-time nature of PFIB, if its work is recognized as being cursory, is not necessarily undesirable. Members can bring a fresh perspective from their other pursuits, and they are less compromised by the secrecy and insular views of intelligence agencies. On the other hand, heavy reliance on this Board for oversight, without more outside professional staff and greater Presidential commitment, is an illusion.

Footnotes:

⁴⁰⁰The Committee felt that access to materials relied on and prepared by the Board was the only equitable method of assessing the Board's past perfor-

a need for intelligence consumers to somehow institutionally convey their problems to collectors, there appears to be a general low level of interest on the part of several members and misgivings as to the effectiveness of the panel as presently constituted.

The Economic Intelligence Subcommittee's performance to date can be easily evaluated. While its purpose—to provide consumers of economic intelligence a forum to convey their needs—appears worthwhile on paper, it has produced no results. One meeting was held in May 1975, at the behest of the DCI.

The Chairman, Assistant Secretary of the Treasury for International Affairs, told Committee staff that as a consumer he was generally satisfied with intelligence input, that the group was a waste of time, and that he intended to hold as few meetings as possible. Displaying an attitude rare among government officials, the Chairman disdained formal high-level committees and called for informal communication at the working level. He has since left his post and may well be replaced by a proponent of bureaucratic committees. Nonetheless, the record strongly calls for an abolition of the Subcommittee, as presently operated and tasked.

10. The Management and Production of Defense Intelligence

The Deputy Secretary of Defense recently expressed frustration at the apparent inability of a multi-billion dollar U.S. intelligence establishment to produce timely and useful information. He reportedly complained that "In a mechanical sense the system produces the information, but it's so damn big and cumbersome and uncoordinated, that you can't get the information properly assessed and to the right people."⁴¹⁷

Mismanaged and uncoordinated intelligence operations result in more than resource waste.

During the Vietnam War and Cyprus crisis, for example, uncoordinated and duplicative reports compounded the problem of intelligence events.

There is a clear need to challenge organizational proliferation, duplication of activity and product, and overlapping of management layers that have plagued defense intelligence for years. The significance of these problems is contained in the fact that

1. Covert Action

The Committee has examined CIA covert action operations and has considerable evidence that they are irregularly approved, sloppily implemented, and at times have been forced on a reluctant CIA by the President and the National Security Advisor.

"Covert action" may be defined as clandestine activity other than purely information-gathering, which is directed at producing a particular political, economic, or military result.

Successive administrations have cited Section 102 of the National Security Act of 1947 as the legal justification for covert action.⁴¹ During the course of this investigation, the Special Counsel to the Director of Central Intelligence has argued that the President, in his conduct of foreign relations, has an inherent constitutional mandate to authorize these activities.⁴²

On the other hand, in recent years, commentators have maintained that in establishing the CIA, Congress had no specific intention that covert operations apart from intelligence-gathering missions be conducted. Witnesses before the Committee likewise disputed any inherent constitutional power to authorize actions in any event, Congress has implicitly acquiesced in covert action through the oversight process.

It may be argued that there has been explicit approval as well as the War Powers Act and knowledge of the authority of the President to conduct overt military hostilities, albeit for a limited period, without a Congressional declaration of war, the Ryan-Hughes Amendment to the Foreign Assistance Act of 1974⁴³ formally acknowledges the existence and legality of covert action.

The Committee has surveyed all Forty Committee approvals since 1965, and has delved deeply into three recent covert action projects. It is believed that the Committee's review of ten years of covert action is without precedent in the Congress or the executive branch.

a. Ten Year Survey

Our primary purpose was to determine whether the Forty Committee and its predecessors had been exercising their oversight and control responsibilities from 1965 to date.⁴⁴ To do this, it was necessary to

In summary, finished intelligence generated by DIA has repeatedly failed to meet consumer needs. The evidence suggests that DIA does not fulfill the mission operations of the early 1960s. It is duplicative, expensive, unresponsive, and its production capabilities are handicapped by the consistent wastefulness of its own organization.

Footnotes:

⁴¹Quoted by William Beecher, Acting Assistant Secretary of Defense for Public Affairs, in Report of the Defense Panel on Intelligence, January, 1975, p. 7 of his statement.

⁴²See, for example, the IC Staff Preliminary Post-Mortem report on the October War which concludes, "The coordination procedures which are followed by the Community during normal times are frequently abandoned during times of crisis—because the press of time may simply not allow regular processes to continue. It thus has been said that the Community is pretty good about coordinating, except when the intelligence becomes important. And, in a way, this did indeed happen immediately before and during the October War in the Middle East. Coordination of the Central Intelligence Bulletin, for example, was suspended for a time, and the wartime Situation Reports and Spot Reports prepared by CIA, DIA and INR were unilateral and often duplicative issuances. This, if not a major problem for the analysts themselves, was certainly one for the consumers..." (IC Staff). The Performance of the Intelligence Community Before the Arab-Israeli War of October 1973: A preliminary Post-Mortem Report, December, 1973, p. 19, emphasis added.)

⁴³The President on November 5, 1971, citing the "need for improved intelligence product and for greater efficiency in the use of resources allocated to intelligence" charged the DCI with greater responsibility for coordinating the community intelligence effort. His Memorandum stated that the President would "look to him (DCI) to improve the performance of the community, to provide his judgments on the efficiency and effectiveness of all intelligence programs and activities (including tactical intelligence), and to recommend the appropriate allocation of resources to be devoted to intelligence," (emphasis added). More specifically, he directed "the Director of Central Intelligence to prepare and submit each year, through OMB, a consolidated intelligence pro-

the Department of Defense controls nearly 80 percent of the intelligence community's resources and employs nearly 90 percent of its personnel.

Particular attention must be directed toward the Defense Intelligence Agency (DIA), an organization established in the 1940s to integrate and align defense intelligence activities, and a major production unit in its own right.

As chartered, DIA was to function as both a supervisor and coordinator, and as centralized producer of intelligence.

Over the years, however, it became increasingly apparent that DIA could not accomplish the ambitious management and production goals envisioned at the time of its formation. A string of overviews, including the 1969 Froehle report, the 1970 Blue Ribbon Defense Panel, the 1971 Schlesinger study for the Office of Management and Budget, the 1974 Management Review, and the 1975 Defense Panel on Intelligence all found that organizational impediments and product imperfection have continued to persist after years of DIA operation. Each in turn recommended reorganization and substantive improvements. None solved the problems.

DIA lacks comprehensive authority to direct and control resources throughout the Defense Department, as initially envisioned. For example, the vast cryptologic resources in the armed services and the National Security Agency are not responsible to DIA. DIA's resources management functions were taken over in 1972 by an Assistant Secretary of Defense for Intelligence with a broader mandate to coordinate budget-

The central problem is bureaucratic politics. The three individual branches of the military resist any organization which might curb their authority to direct programs and allocate resources. They undermine the concept on which DIA was founded, by avoiding its authority and preventing it from obtaining qualified manpower.

President Nixon recognized that DIA had not achieved its purpose and issued a directive on Nov. 5, 1971, charging the DCI with responsibility for intelligence budget preparation, including the budget for tactical military intelligence. This too failed, since the DCI lacked authority for over 80 percent of the community's budget, which remained in the Department of Defense.⁴⁵

The only noticeable effect of these reforms has been an added layer of bureaucracy and a confused sharing of responsibilities.

The output side of DIA's operation has been criticized from a number of directions. Over the years, neither the Secretary of Defense nor the armed services have been completely satisfied with DIA product. Secretary of Defense McNamara reportedly preferred CIA's product; the services prefer their own analysis.⁴³ Their criticisms focus on DIA's current intelligence and its estimates. They raise questions as to DIA's capability to produce unique and quality intelligence to meet tactical and national demands.

An internal Defense Department memorandum to the Deputy Secretary of Defense in January 1974 indicated the scope of DIA inadequacy in light of the mid-East war failure. The memorandum concluded:

"What has been stated briefly are only the symptoms of the disease. The causes lie deeper . . ."

While noting the failure of DIA analysts to predict the war, the memo stated, "the blame is not theirs alone. It is a corporate failure, a chronic unsoundness of the entire DIA mechanism. Unless we make the required changes in organization, procedures, and personnel, we are going to reap another intelligence failure—and the next one could be a disaster involving U.S. Forces."

While several of the root causes of poor performance provide an argument for piecemeal reform, in general the problems are too permanent to allow for anything less than across-the-board changes.

A major obstacle to strong analytic capability within DIA results from the civilian-military nature of DIA, in a setting of independent military establishment. As long as the service branches retain viable intelligence units, DIA remains an unattractive assignment and will not attract qualified officers. In addition, manpower reductions have spread available personnel too thin for effective reporting.

Civilians in DIA are confronted with two disincentives. DIA cannot compete with CIA and NSA in appointments and promotions, and persistent military control of higher grade management positions limits mobility.⁴⁴

Officials within DIA are ready to admit they cannot match CIA. They justify their contribution as that of "devil's advocates," or "honest brokers." Even in military intelligence, the Committee was told, "they (CIA) are at least our equals, meaning that DIA was no real improvement over CIA intelligence."

gram budget, including tactical intelligence," (emphasis added). These sentiments are reiterated in an October 9, 1974, Presidential Memorandum. . . .

42 General Graham has written the committee: "I believe that much of this criticism stems from the early growing pains of the DIA, when its consumers, particularly those on Mr. McNamara's staff, turned elsewhere for intelligence analysis when the DIA product did not satisfy them." The 1975 Defense Panel on intelligence indicated dissatisfaction with DIA by Secretary of Defense Schlesinger and the Assistant Secretary of Defense for International Security Affairs, both important consumers. Vice Admiral David Richardson, in the same report, offered his experience as a commander of deployed forces to point out "the institutional inability of the Agency to provide other than intelligence for background and data base purposes."

43 The most recent density ratios (supergrades compared to total force) show that possibility of advancement for civilians is vastly better in CIA than in DIA. The Civil Service Commission has refused DIA exemption from the General Schedule that CIA maintains. A deputy director of DIA informed Committee staff that civilians are still "second class citizens" there. Staff interview with James Agersborg, DDI/DIA, Nov. 10, 1975. Statistics provided by ASDI.

Risks

The American taxpayer clearly does not receive full value for his intelligence dollar. The costs of intelligence should not, however, be measured in dollars alone. Many day-to-day activities inevitably pose real risks.

The Committee has found that when results are measured against hazards alone, certain intelligence programs may be wholly unacceptable; other projects may too easily stray from wise and worthwhile courses, without detection.

It is disturbing that the consequences of intelligence activities are sometimes apparently given scant consideration by policy makers. Even more troubling are indications that this insensitivity continues when dangers reveal themselves.

trace the process from proposal to final approval. Like other aspects of covert action, fixing responsibility for the initiation of various covert action projects was a difficult task. As recorded in Forty Committee records, the vast majority of projects was submitted by the Joint Chiefs of Staff.

45 The high number of covert action proposals represents a general activism within the foreign affairs bureaucracy, especially within CIA. The overall picture, however, does not support the contention that covert action has been used in furtherance of any particular single form of government, or identifiable national interest. Instead, the record indicates a general lack of a long-term focus in U.S. foreign policy. Covert actions, as the means for implementing a policy, reflected this band-aid approach, substituting short-term remedies for problems which required long-term cures.

Covert action proposals came from a variety of interest areas: a foreign head of state, the Department of Defense, the Department of State, an Ambassador, CIA, the Assistant to the President for National Security Affairs, a cabinet member, or the President himself. Proposals involving a large expenditure of funds or classified as "politically sensitive" required review and approval of the Forty Committee. Unfortunately, the executive branch does not have a clear definition of what constitutes a large or politically sensitive operation. Projects of less sensitivity are approved within the CIA, usually at the level of the Deputy Director for Operations, with the determination of "political sensitivity" being left to the Director of Central Intelligence.

The Forty Committee is chaired by the Assistant to the President for National Security Affairs and includes the Deputy Secretary of Defense, the Undersecretary of State for Political Affairs, the Chairman of the Joint Chiefs of Staff, and the Director of Central Intelligence. Theoretically, a detailed proposal is presented to this group. The members are then afforded an opportunity for a full discussion of the merits and a reporting of their views to the President. In practice, the Forty Committee has often been little more than a rubber stamp.

The procedures for approval of covert action have changed with administrative, political conditions and personalities. At various times, the approval process has been actively informal, extraordinarily active, and informal.

the village VOICE February 16, 1976

While on occasion some projects have been considered in depth, at Committee meetings which included the approval or disapproval of formal votes, several informal procedures have frequently been used. These informal procedures, such as telephonic votes, do not allow each member to benefit from the views of his colleagues. At times, members have been given only the barest of details, and instead of formal votes have simply been allowed the opportunity to acknowledge the project's existence.

The Forty Committee has only one full-time professional staff member. Because of the high degree of compartmentalization attending these projects, committee members—who are among the busiest officials in government—are frequently in the position of evaluating a complex proposal without adequate staff support. The Assistant to the President for National Security Affairs and the Director of Central Intelligence, having the incentive and the resources to cope with Forty Committee business, clearly dominate the process.

The origin of many covert action projects is murky at best. The CIA, as the prospective implementation arm, is often directed to produce proposals for review and is, therefore, inaccurately seen as a plan's original proponent. It is clear that on several occasions involving highly sensitive projects, CIA was

summarily ordered by the President or the National Security advisor to carry out a covert action program. It is further clear that CIA has been ordered to engage in covert action over the Agency's strong objections.

All evidence in hand suggests that the CIA, far from being out of control, has been utterly responsive to the instructions of the President and the Assistant to the President for National Security Affairs. It must be remembered, however, that the CIA Director determines which CIA-initiated covert action projects are sufficiently "politically sensitive" to require Presidential attention.

From 1965 to 1972, a majority of approvals occurred subsequent to a formal committee meeting; although many telephonic approvals also took place during this period. In 1972, the process became quite informal, often involving mere notification to members that an operation had already been set in motion by the President. The Forty Committee, as the review

c. Media and Propaganda
Some 29 percent of Forty Committee approved covert actions were for media and propaganda purposes. This number is probably not representative. Staff has determined the existence of a large number of CIA internally-approved operations of this type, apparently deemed not politically sensitive. It is believed that if the correct number of all media and propaganda projects could be determined, it would exceed Election Support as the largest single category of covert action projects undertaken by the CIA.

Activities have included support of friendly media, propaganda efforts, insertion of articles into the local press, and distribution of books and leaflets. By far the largest single recipient has been a European publishing house founded since 1951. There are a number of similar operations in the region. About 25 percent of the program has been directed at the Soviet Bloc, in the publication of clandestine import and export of Western and Soviet dissident literature.

d. Paramilitary/Arms Transfers
The 43 percent approvals in this category from 1965 to 1975 have taken one of essentially four forms: secret covert financial support to groups engaged in hostilities; paramilitary training and advisers; and shipment of arms, ammunition and other military equipment. Military ordnance is typically supplied by CIA out of its large inventory of U.S. weaponry and captured foreign weapons.

The Committee scrutinized these projects carefully since this category is the most expensive and represents the greatest potential for escalating hostilities and deepening American involvement. By far the most interesting, and important, fact to emerge was the recognition that the vast majority of these covert action projects were proposed by members outside CIA.

Many of the programs were summarily ordered without Congressional CIA misgivings, however, were at times weakly expressed, as CIA is afflicted with a "can do" attitude.

At times, CIA has been used as a conduit for arms transfers in order to bypass Congressional scrutiny. A State Department-proposed project which could have been accomplished under the Military Assistance

considered "politically sensitive" and taken to the Forty Committee for approval. This, in turn, may reflect his recognition that the Forty Committee had fallen into disuse and their approvals pro-forma.

There is no indication that the passage of the Ryan-Hughes Amendment to the Foreign Assistance Act of 1974, requiring Presidential certification and briefings of Congressional oversight committees, has had a significant impact on the national covert action program. As the events of 1975 have shown, those who had warned that the Amendment and the Congressional probes into the U.S. intelligence community would make covert action impossible, have not seen their fears realized.

g. Three Projects

The three projects examined in depth were selected from major recent operations, apart from the American experience in Indochina, and involved different types of covert activity. One was election funding of pro-U.S. elements in an allied country. The second was Presidential-directed arms support of an insurgency movement at the behest of the foreign head of a third country. The last involved a mix of political action, military training, and assistance to pro-Western forces in Angola. The last project was also initiated in part at the request of a third party.

The Committee became aware of each of these operations through other parts of its investigation and through information provided to staff by sources outside the intelligence community. For example, a study of CIA arms inventories and shipments led to the major Agency para-military support operations.

The case studies are not representative of all covert action since 1965. The Committee does believe that they are not atypical of most major programs of this type. CIA has indicated its agreement with the completeness and factual accuracy of the staff's analysis, though not necessarily with the conclusions.

Case I: Election Support

The U.S., perhaps needlessly, expended some \$10 million in contributions to political parties, affiliated organizations, and 21 individual candidates in a recent parliamentary election (Italy—editor's note) held in an allied country. The program was initiated by our Ambassador, Graham Martin—editor's note, who later persuaded



India explodes a nuclear device, May 1974:

and approval mechanism for covert action, fell into virtual disuse, with telephonic approvals being the rule and formal meetings the exception. One formal meeting was held in 1972, none in 1973 and 1974. This process did not begin to reverse itself until 1975.

b. Election Support

From 1965 to date, 32 percent of Forty Committee approved covert action projects were for providing some form of financial election support to foreign parties and individuals. Such support could be negative as well as positive. This is the largest covert action category and its funding has occurred in large part in the developing countries. With few exceptions, financial support has been given to incumbent moderate party leaders and heads of state.

Certain projects have had a long life. One Third World leader received some \$100,000 over a 14-year period. Others were financially supported for a few years.

c. Organizational Support

A plethora of foreign, civic, religious, professional, and labor organizations have received CIA funding. There has been no real geographical concentration, although the Third World was again well represented. For example, one labor confederation in a developing country received an annual subsidy of \$30,000 in three successive years.

f. Trends

Since 1965, there has been a general decline in the number of covert action projects approved by the Forty Committee. These indications that the low figure represents the Director of Central Intelligence's determination that not as many projects should be

the Assistant to the President for National Security Affairs [Henry Kissinger—editor's note] to authorize him, rather than CIA, to select funding recipients and otherwise control the program's implementation. The results of the aid were mixed and short-lived.

With national assembly elections less than two years away, the U. S. country team concluded from a CIA-contracted survey that the pro-U.S. elements, which had governed the country since the post-war period, were being seriously challenged by the Communists. The opposition, apparently heavily financed by Moscow, had scored gains in regional elections and trailed the incumbents by only a few points in the opinion polls.

Pro-West parties and affiliates had received substantial funding in the past. CIA reports total U.S. election financing over a previous 20-year period at some \$65 million.⁴⁸ Despite this massive aid, the beneficiaries had suffered repeated electoral setbacks. American observers apparently concluded that another "quick fix" was necessary to see our clients through the next vote.

Anxious to gain control of the covert program and fearing that inter-agency consideration would be inhibiting, the Ambassador has originally sought the President's personal approval of the proposed political action.⁴⁹

This course would avoid the Forty Committee and with it, the inevitable role of CIA in implementing the program. The Ambassador was relieved. Ironically, the Assistant to the President then requested that CIA draft a proposal without the knowledge of the Ambassador or the Department of State.⁵⁰

It is known that during this period the President was indirectly approached by prominent international businessmen, who were former nationals of the allied country. Their communications to the President were not available to the Committee.⁵¹

The Forty Committee subsequently approved the CIA proposal, but with unusual implementation. Despite the usual near-automatic control of covert action by CIA, the Ambassador, by all accounts a man of unusual force, successfully extracted from the Assistant to the President the commitment that he would have total control of the "mix and implementation" of the project.⁵² Thus, the Ambassador, who had been in the country less than two years and did not speak the language, would determine which individuals and organizations would receive U.S. funds. The

CIA station would be reduced to couriers. The Agency expressed concern that a high profile by the Ambassador would needlessly compromise the program; their complaints fell on deaf ears, despite the agreement of all that exposure would bring down the pro-West government.

A major political party received \$3.4 million; a political organization created and supported by \$1.4 million; other organizations and parties, a total of \$13 million. Substantial funds were provided to several incumbents whose seats did not appear in jeopardy. Of a total of \$11.8 million approved by the Forty Committee, only \$9.9 million was actually spent. The reserve was held to be spent in the following year.

CIA concurred in most of the recipients chosen by the Ambassador, although differences were expressed on precise amounts. There were serious disagreements over some recipients. One of these was a high local intelligence official to whom the Ambassador wanted to give over \$800,000, to conduct a propaganda effort. The Ambassador was unmoved by CIA warnings that the man was clearly linked to anti-democratic elements of the right, and went ahead with the funding.⁴⁵⁶

Embassy control of the funds was poor. Participants in the program testified before the Committee that little effort was made to earmark grants or, failing that, at least seek assurances that the money was spent as intended by the Forty Committee. The Ambassador resisted most CIA control suggestions, insisting that such monitoring would insult the recipients. Thus, there was almost no accounting or control of the expenditures.⁴⁵⁷ There is no indication that the Ambassador began to encounter interference from Washington at this point.

The fruits of this U.S. investment are difficult to assess. The pro-U.S. elements retained control of the government by small plurality and most of the incumbents supported were returned to office. On the other hand, the ruling coalition quickly lost public support and suffered severe reverses in subsequent local elections.

Case 2: Arms Support

[At this point in the committee report one manuscript page was missing. It is clear from the context that the missing material opened a discussion of a U.S. scheme, involving the Shah of Iran, to channel secret aid to

ment of State, which had consistently opposed such ventures in the region, be kept in the dark.⁴⁵⁸

Perhaps more than the President's disregard of the Forty Committee, the apparent "no win" policy of the U.S. and its ally deeply disturbed this Committee.

Documents in the Committee's possession clearly show that the President, Dr. Kissinger and the foreign aid staff agreed that our clients would not prevail.⁴⁵⁹ They preferred instead that the insurgents simply continue a level of hostilities sufficient to sap the resources of our ally's neighboring country.⁴⁶⁰ This policy was not imposed on our clients, who were encouraged to continue fighting. Even in the context of covert action, ours was a cynical enterprise.

It is particularly ironic that despite President Nixon's and Dr. Kissinger's encouragement of hostilities to keep the target country off-balance, the United States personally restrained the insurgents from an all-out offensive on one occasion when such an attack might have been successful because other events were occupying the neighboring country.⁴⁶¹

All U.S. aid was channeled through our collaborator, without whose logistical help direct assistance would have been impossible. Our national interest had thus become effectively meshed with his. Accordingly, when our ally reached an agreement with the target country and announced his own aid to the insurgents, our U.S. had no choice but to acquiesce.

The extent of our ally's leverage over U.S. policy was such that he apparently made no effort to notify his junior American partners that the program's end was near.

The insurgents were clearly taken by surprise as well. Their adversaries, knowing of the impending aid cut-off, launched an all-out search-and-destroy campaign. The day after the agreement was signed⁴⁶² the enemy movement was the end of our former clients scattered before the central government's superior forces.⁴⁶³

The cynicism of the U.S. and its ally had not yet completely run its course, however. Despite direct pleas from the insurgent leader and the CIA station chief in the area to the President and Dr. Kissinger, the U.S. refused to extend humanitarian assistance to the thousands of refugees created by the abrupt termination of military aid. As the Committee staff was reminded by a high U.S. official, "covert action should not be confused with missionary work."⁴⁷¹

the U.S. aid should not be given solely to Roberto Savimbi.

The Committee has learned that a task force composed of high U.S. experts on Africa⁴⁷² strongly opposed military intervention. Instead, last April they called for diplomatic efforts to encourage a political settlement among the three factions to avert bloodshed. Apparently at the direction of National Security Council aides, the task force recommendation was removed from the report and presented to NSC members as merely one policy option. The other two alternatives were a hands-off policy or substantial military intervention.

Of CIA's \$31 million figure, said to represent expenditures to the end of 1975, about half is attributed to supply of light arms, mortars, ammunition, vehicles, boats, and communication equipment. The balance includes shipping expenses and cash payments. The Committee has reason to question the accuracy of CIA's valuation of military equipment sent to Angola. A state accountant on loan from the General Accounting Office has determined that CIA "costing" procedures and the use of surplus equipment have resulted in a substantial understatement of the value of U.S. aid. Examples include .45 caliber automatic weapons "valued" by CIA at \$5.00 each and .30 caliber semi-automatic carbines at \$1.55. Based on a sampling of ordnance cost figures and comparison with Department of Defense procedures, staff advises that the CIA's ordnance figure should at least be doubled.

Dr. Kissinger has indicated that U.S. military intervention in Angola is based on three factors: Soviet support of the MPLA and the USSR's increased presence in Africa, U.S. policy to encourage moderate independence groups in southern Africa, and the U.S. interest in promoting the stability of Mobutu and other leadership figures in the area. Past support to Mobutu, along with his responsiveness to some of the United States recent diplomatic needs for Third World support, make it equally likely that the paramount factor in the U.S. involvement is Dr. Kissinger's desire to reward and protect African leaders in the area. The U.S.'s expressed opposition to the MPLA is puzzling in view of Director Colby's statement to the Committee that there are scant ideological differences among the three factions, all of whom are nationalists above all else.⁴⁸¹

Control of resources may be a factor. Angola has

the Kurds in their rebellion against the Government of Iraq.⁴⁵⁶

The program, ultimately to involve some \$16-million, was apparently endorsed by the President after a private meeting with the foreign head of state and Dr. Kissinger.

There was no Fortify Committee meeting at which a formal proposal paper containing both pros and cons could be discussed and voted on. Instead, members were simply directed to acknowledge receipt of a sparse one-paragraph description of the operation in setting of almost unprecedented secrecy within the U.S. government. John B. Connally, the former Treasury Secretary, about to assume a major role in the President's reelection campaign, personally advised the head of state that the U.S. would cooperate.⁴⁶¹

The recipients of U.S. arms and cash were an insurgent ethnic group fighting for autonomy in a country bordering our ally. The bordering country has never ally had long been bitter enemies. They differed substantially in ideological orientation and in their relations with the U.S.

Evidence collected by the Committee suggests that the project was initiated primarily as a favor to our ally, who had cooperated with U.S. intelligence agencies, and who had come to feel menaced by his neighbor.

As our ally's aid dwarfed the U.S. aid package, our assistance can be seen as largely symbolic. Documents made available to the Committee indicate that the U.S. acted in effect as a guarantor that the insurgent group would not be summarily dropped by the foreign head of state.⁴⁶² Notwithstanding these implicit assurances, the insurgents were abruptly cut off by our ally, three years, thousands of deaths, and 16 million refugees later.⁴⁶³

It appears that had the U.S. not reinforced our ally's prodding, the insurgents may have reached an accommodation with the central government, thus gaining at least a measure of autonomy while avoiding further bloodshed. Instead, our clients fought on, sustaining thousands of casualties and 200,000 refugees.

There is little doubt that the highly unusual security precautions and the circumvention of the Fortify Committee were the product of fears by the President and Dr. Kissinger that details of the project would otherwise leak—a result which by all accounts would have multifoldly displeased our ally. It is also clear that the secrecy was motivated by a desire that the Depart-

Case 3: Angola

For reasons not altogether clear, and despite the opposition of senior government officials, the U.S. has been heavily involved in the current civil war in Angola.

The CIA has informed the Committee that since January 1975, it had expended over \$31 million in military hardware, transportation costs, and cash payments by the end of 1975. The Committee has reason to believe that the actual U.S. involvement is much higher. Information supplied to the Committee also suggests that the military intervention by the Soviet Union and Cuba is in large part a reaction to U.S. efforts to break a political stalemate, in favor of its clients.

The beneficiaries of U.S. aid are two of the three conflicting factions: the National Front for the Liberation of Angola (FNLA) and the National Union for the Total Independence of Angola (UNITA). The third faction contesting for control of the government, following independence on November 11, 1975, is the Soviet-backed Popular Movement for the Liberation of Angola (MPLA). CIA estimates that the fighting had claimed several thousand casualties by the end of 1975.

The main U.S. client is the National Front, headed by Holden Roberto, a longtime associate and relative of President Mobutu Sese Seko of neighboring Zaire. Subsequent to President Mobutu's request last winter to Dr. Kissinger, as independence for Angola became a certainty, the Fortify Committee approved forwarding Roberto \$300,000 for various military action activities,⁴⁷⁴ restricted to non-military objectives.

Later events have suggested that this institutional U.S. aid, unprecedented⁴⁷⁵ and massive in the underdeveloped colony, may have panicked the Soviets into laminating their MPLA clients, whom they had backed for over a decade and who were now in danger of being eclipsed by the National Front. Events in Angola took a bellicose turn as the U.S. was requested by President Mobutu to make a serious military investment.

In early June, 1975, CIA prepared a proposal for military aid to pro-U.S. elements in Angola, the cost of which was set at \$6 million. A revised program, costing \$14 million, was approved by the Fortify Committee and by President Ford in July. This was increased to \$25 million in August, and to about \$32 million in November. By mid-summer, it was decided

significant oil deposits and two American multinationals, Gulf and Texaco, operate in the off-shore area. Gulf had deposited some \$100 million in concession fees in a national bank now under MPLA control. At the suggestion of the U.S. government, the company suspended further payments.

Until recently, the U.S.-backed National Front was supported by the People's Republic of China, which had provided about 100 military advisors. Mobutu has provided a staging area for U.S. arms shipments and has periodically sent Zairian troops, trained by the Republic of North Korea, into Angola to support Roberto's operations. Small numbers of South African forces have been in the country and are known to have been in contact with Savimbi's UNITA troops.

Pursuant to Section 662 of the Foreign Assistance Act of 1974, the President has found that the Angola action program is "important to the national security." As directed by the Act, CIA has briefed the Congressional oversight committees as to the Fortify Committee approvals of increased amounts of military aid.

CIA officials have testified to the Committee that there appears to be little hope of an outright MPLA military defeat. Instead, U.S. efforts are now aimed at promoting a stalemate, and in turn, the ceasefire and the coalition government urged by the foreign-born U.S. task force.

Footnotes:

⁴⁷⁴Section 102 (d) (5) calls on CIA, under National Security Council direction, "to perform such other functions and duties as may be required to intelligence affecting the national security as the National Security Council may from time to time direct."

⁴⁷⁵Michael Rogovin, Counsel to the DCI, argued that "before there was a 1947 Act there was a United States and a United States with a President with the authority to conduct foreign affairs and he conducted such affairs over the history of the nation which involved activity which we now know as covert activity. Now the 1947 Act did not give the President a power he did not have before. The 1947 Act merely came upon the scene as it was and it set up the National Security Council. The Council itself subsequently took its authority and devised a 40 Committee as an implementing system for getting information with respect to covert activity. So that the activity in 1972 grew from two separate legal authorities for the President to pursue."

MEMORANDUM FOR THE RECORD		14 JULY
43Section 32 of Public Law 93-559 (The Foreign Assistance Act Amendments of 1974) states in part: "No funds appropriated under the authority of this or any other Act may be expended for or on behalf of the Central Intelligence Agency for operations in foreign countries other than activities intended solely for obtaining necessary intelligence, funds that each the President of the United States, finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives." The remaining four committees are the Armed Services and Appropriations Committees of the House of Representatives and the Senate. 44Subsequent to a subpoena issued by the Committee on Nov. 6, 1975, two staff members reviewed all records of the Forty Committee reflecting approvals for Covert Action from 1965 to 1975. All information and statistics used in the section entitled "Ten Year Survey" are drawn from the staff review of those documents. The staff presented their findings to the full Committee in Executive Session testimony on Dec. 9, 1975. During that session, Mr. Colby had an opportunity to express his views on the staff report and while he had reservations about the conclusions, he raised no substantial disagreement with the facts. 47It appears clear that this expenditure was made despite the fact that money was "not the problem." Cable from Chief of Station To Headquarters 3 March "Ambassador continues to cogitate on nature, amount and channel for financial assistance an dwelling situation very little. He is aware of Station view that money is not the problem, [deleted] has plenty and any amount we contribute to [deleted] will have insignificant effect on electoral showing. If we could reduce the pernicious effect of interparty squabbling and get party to pull in unison this would be worth financial support. We do not exclude possibility Ambassador [deleted] will want to give some money strictly as a demonstration of 'solidarity,' and a case might be made for this, but not two million dollars worth." (Emphasis supplied)	"2. [State Department official] said that one of the problems that he had in dealing with [deleted] affairs is that people like [international businessman] had excellent access to higher echelons of our government, and there was no way of knowing their information input. He said that [international businessman] had very good relations with [deleted] of the White House. (The international businessman conducted foreign fund-raising activities for a U.S. political party.)" 47Testimony given to the Committee by the CIA Deputy Director for Operations states that "... The Forty Committee approval stated that Ambassador [deleted] would 'control the mix and implementation ... of the program and would be expected to 'forward recommendations' for additional overt activities which might be undertaken in support of U.S. objectives in [deleted]." Comm. Hearings ... The Agency was uncomfortable with this unaccustomed turn of events. In cables from the Station, it was reiterated that the Ambassador was to be the one calling the shots. Cable from Chief of Station To Headquarters June "1. Morning 4 June 1 delivered to Ambassador, a sterile copy of your message. After reading it he commented that 'They still do not understand that the program as approved by 40 Committee and the President is only an illustrative one leaving to Ambassador [deleted] the authority to decide what should be done.' "4. Headquarters is in error if it really believes friction with Ambassador [deleted] can be avoided if Ambassador understands CIA views better. He understands them only too well. It is this 'understanding' that causes the friction and it will continue." The Agency and the Ambassador had frequent disagreements over the "air-and-implimentation" of the new ... and its developments Comm. Hearings at "AMBASSADOR. One of the people who was here this morning, the Acting Chief of Station, couldn't get away from the fact that the Agency had traditionally run all this and [thought that] the Agency knew better what needed to be done and [couldn't accept]	
months of the project that he would go directly to the President for his approval and that he would exclude the CIA from whatever plans he would propose. Cable from Chief of Station To Headquarters 13 March "Ambassador [deleted] case (which he has presented to President [deleted] and National Security Advisor [deleted] and not to State Department or to Committee). Imperative keep these observations as privileged within CIA owing Ambassador [deleted] explicit admonitions to Chief of Station to effect he does not repeat not wish inform anyone in Washington his views until he personally sees President [deleted]." Cable from Chief of Station To Headquarters 14 October "Concur that Ambassador [deleted] will raise the need for political action in [deleted] in the future ... A key to his thinking is his strong conviction that any political action program in [deleted] which requires 'interagency approval' is not likely to get off the ground." Cable from Headquarters To Chief of Station 15 October "... Keep in mind that Ambassador [deleted] previous proposal re support of [projects in other countries] ... floundered in large measure because it was not submitted through proper channels and thus was not injected into interagency mechanism until too late." Nonetheless, the Ambassador stated to the Committee that he had not really attempted to bypass the Forty Committee. Comm. Hearings "CHAIRMAN PIKE. But was not an effort made to have your plan approved by the President without going through the Forty Committee route? AMBASSADOR [deleted]. No sir, it would never have occurred to me that this was even possible." 48The initial Forty Committee approval paper which was drafted by the CIA stated, "4. Coordination.		

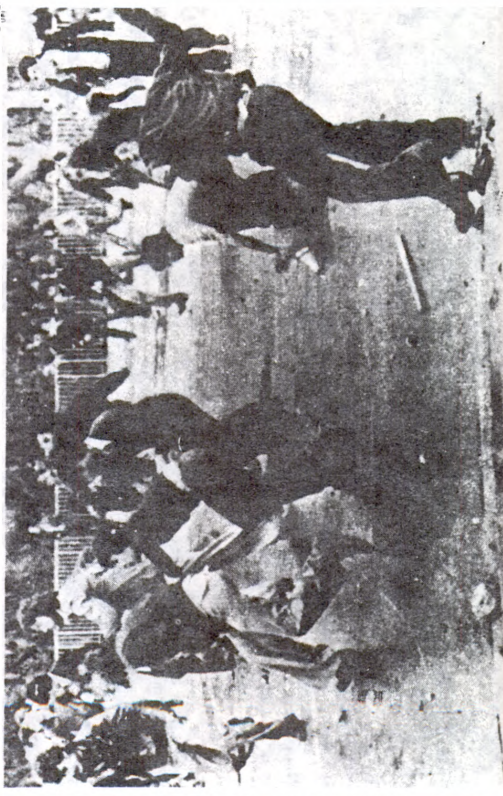
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SUBJECT: Forty Committee Approval For Political Action Pro- gram 18 February "Costs This program will cost \$1,050,000 the first year and \$2,465,000 the second . . ." MEMORANDUM FOR: Director of Central Intelli- gence Ambassador [deleted] Proposed [deleted] Elec- tion Program 7 March	"At the request of [National Security Advisor], this program has not yet been coordinated with Am- bassador or with the Bureau of [deleted] of the Department of State." The CIA, while waiting for the President to re- spond to the Ambassador's proposal, did not believe that the CIA could wait indefinitely for that answer. Cable from Headquarters To CIA Chief of Station 7 January "At this juncture, Ambassador [deleted] should not repeat not be apprised of this draft paper's prepara- tion. CIA is preparing the draft paper . . . for internal purposes and it will not repeat not be discussed with State at this time." ⁴⁵¹The CIA alluded to other approaches to the President by private individuals. Cable from Chief of Station To Headquarters 10 February "2. An important factor in Ambassador [deleted] desire to present an action program is his problem of how to cope with the many American and [de- leted] channels to President [deleted] office which now exist. Ambassador [deleted] has become aware of this special character of [deleted]-U.S. relations and is trying to get a handle on this problem rather than having to react to the advice and influence of- fered by others." Cable from Chief of Station To Headquarters 11 February "B. Ambassador [deleted] insists that unless he pro- ceeds quickly 'certain people' will push the White House into a 'disastrous program.' The name of [an international businessman who contacted the White House] finally emerged. 'If you think the [right-wing foreign intelligence officer's] program is bad, you should see the kind of stuff [international business- man] is trying to sell.' In the Ambassador's view '[international businessman] is further to the right than [right-wing politician]'. State Department officials in talks with the Agency also expressed reservations in dealing with these channels to the White House.
SUBJECT: "Costs Of the \$10,000,000 the \$1,790,000 for the [deleted] is to come from the budget approved on March 10 by the 40 Committee . . . \$8,300,000 in new funds will be required." ⁴⁴⁹ MEMORANDUM FOR: The Forty Committee Political Action Pro- gram for [deleted] to Arrest the Growing Power of the Commu- nists 10 March	"1. History of CIA Supported Political Action in [de- leted]. The United States government was concerned in 1948 that the Communists would emerge from the national elections sufficiently strong to enter the gov- ernment as a major if not dominant force. As a coun- ter, it was decided that CIA should give \$1,000,000 to the center parties for this election with the bulk going to [deleted]. Between 1948 and 1963 funds provided to [de- leted] totaled approximately \$5,450, 000. Between 1948 and 1963 additional support to [deleted] in eight national and regional elections amounted to \$11,800,000. Between 1958 and 1968, the [deleted] received about \$26,000,000 to support its opposition to the Communist dominated labor confederation. [deleted] received some \$11,350,000 during this pe- riod. Between 1948 and 1968 other organizations re- ceived about \$10,550,000 of CIA assistance. This sup- port was given to the following political parties as- sociated with center or center-left governments . . . sum, excluding the initial \$1,000,000 spent in the 1948 campaign, CIA gave [deleted] and its re- lated organizations \$4,600,000 as well as \$10,550,000 to the other non-Communist parties and affiliates for a grand total of \$65,150,000 over approximately twenty years, starting in 1948 . . ." "The Ambassador had decided during the first

restricted; therefore, the fact that Dr. Kissinger has received this gift should be similarly restricted." ⁴⁴⁹ The cutoff of aid to the ethnic group came as a severe shock to its leadership. A CIA cable from the COS to the DCI on March 15, 1975, describes the method used by our ally to inform the ethnic group's leadership. On March 5, a representative of our ally's intelligence service visited the headquarters of the ethnic group and "told [them] in bluntest imaginable terms that a) the border was being closed to all repeat all movement, b) . . . could expect no more assistance from [our ally], c) . . . should settle with our ally's enemy on whatever terms he could get, and d) military units would be allowed to take refuge in [our ally's country] only in small groups "and only if they surrendered their arms to our ally's army." ⁴⁵⁰ Elaborate measures were taken to insure that the Department of State did not gain knowledge of

"a uniquely useful tool for weakening [our ally's] enemy's potential for international adventurism." ⁴⁵¹ A White House memorandum of October 10, 1973, from Dr. Kissinger to the DCI states: "The President's concern in your judgment paragraph 3 of your memorandum of October 15 on the above subject. You should therefore and the following reply immediately to [the ethnic group] . . . We do not repeat not consider it advisable for you to undertake the offensive military action that [another government] has suggested to you. . . . For your information, we have consulted with [our ally] through the Ambassador and they have both made the same recommendation. . . . The attack launched the day after the agreement was signed caught the ethnic group by surprise. A message from their headquarters to CIA on 10 March, 1975 read as follows: "There is confusion and dismay among our people and forces. Our people's fate in unprecedented danger. Complete destruction hanging

⁴⁴⁹ The Ambassador and the CIA had sharp disagreements about the funding of this "antiwar, senior intelligence officer and his propaganda program. Initially, the Chief of Station expressed his reservations about the project to the Ambassador.
Cable from Chief of Station
To Headquarters
10 February
". . . 3. In response to Chief of Station's question, 'Do you really care if [foreign intelligence officer] propaganda efforts are successful or not,' Ambassador [deleted] replied, 'Yes, I do, but not a helluva lot. Important thing is to demonstrate solidarity for the long haul.' "
When the Chief of Station continued to resist further on the funding, the Ambassador became very annoyed.
Cable from Chief of Station
To Headquarters
11 February
"3. Ambassador [deleted] said Headquarters absolutely wrong. Said he had discussed in Washington (did not say with whom) and all agreed this was legitimate . . . Chief of Station expressed the view that Ambassador [deleted] should first clarify this point in personal exchange with CIA. The Ambassador [deleted] accused Chief of Station of dragging his feet in contacting [foreign intelligence officer], and said if this continued beyond today, he would 'Instruct Marine guards not to let you in this building and out you on the airplane.' Chief of Station said he thought this a bit extreme and expressed view that Ambassador [deleted] could hardly object to what appeared legitimate Headquarters question. He did object and with vigor. "
The CIA headquarters shared the same concerns as the Station. Chief and warned the Ambassador in conciliatory terms against funding, especially on a no-strings-attached. . . .
457. . . Control over funding was so loose that there was no way of checking to see if funds were being expended for the purposes for which they said they were used. The Ambassador said before the Committee, . . . I think as it turned out that we did get our full money's worth.
"Now on the question of the possibility of a rip-off, that is quite true. The possibility exists . . . "
459 [The beginning of this footnote was not available —editor's note.] . . . we do not wish to become in-



Greek Cypriots attack an American Library, January 1975: Did the U.S. "allow" it to happen?

volved, even indirectly, in operations which would have the effect of prolonging the insurgency, thereby encouraging separatist aspirations and possibly providing to the Soviet Union an opportunity to create difficulties for [two other U.S. allies]." A CIA cable from the COS in the area to the DCI contains the U.S. Ambassador's views on the proposal: "My reaction is against giving financial support to this operation, unless there are important policy considerations to the contrary of which I am not aware. . . . Furthermore, the road is open-ended and if we begin and then decide to withdraw there might be unfortunate misinterpretations of our reasons which could adversely affect our relations with [our ally]." A second proposal was turned down in August of 1971 and again in March of 1972. On the latter occasion, Dr. Kissinger conferred with a high State Department official in-depth on the proposal and agreed that it should be disapproved. . . .

⁴⁶¹The Secretary of the 40 Committee hand-carried a brief one paragraph synopsis of the project to the members for them to initial. The conclusion that the procedure was simply pro-forma is indicated by the fact that John Connally had already informed our ally that the U.S. would provide support to the insurgents. In addition, even the pros and cons contained in the CIA proposal paper prepared for Dr. Kissinger were foregone conclusions. Responding to a question by staff concerning why CIA's negative views of the project were not put more forcefully, a CIA official responded that "the Committee must realize that CIA was told to prepare a paper on 'how' the project could be done, not 'whether' the project should be done." . . .

⁴⁶²On numerous occasions the leader of the ethnic group expressed his distrust of our allies' intentions. He did, however, trust the United States as indicated by his frequent statements that "he trusted no other major power" and asserted that if his cause were successful he was "ready to become the 51st state." (See COS cable to DCI of January 16, 1975, for one example.) In addition, his admiration for Dr. Kissinger was expressed on two occasions when he sent a gift of three rings and later on the occasion of Dr. Kissinger's marriage, a gold and pearl necklace. A May 20, 1974, Memorandum to Brent Scowcroft explains the necessity of keeping the gift secret: "As you are aware, the relationship between the United States Government and the (ethnic group) remains extremely sensitive. Knowledge of its existence has been extremely

the project. Documents suggest that it may have originally been planned to keep the project so severely restricted that not even the Ambassador to the country involved was to be told. . . .

In addition, evidence in the Committee files is conflicting on whether Secretary of State William P. Rogers was ever informed of the project. Officials of Kissinger's staff and CIA officials assumed that he had been briefed since U. Alexis Johnson was a member of the Forty Committee. And, in an interview with staff, Mr. Rogers stated that he felt certain that he had been informed. Nevertheless, a cable from Secretary Rogers almost a year after the project began suggests that he did not have knowledge, as of June 22, 1973. The cable states that "in view of continued U.S. policy not repeat not give encouragement to the [ethnic group's] hopes for U.S. assistance or recognition, we would intend keep contacts at country directorate level." Interview with William P. Rogers, by Aaron Donner, Oct. 20, 1975, copy on file with Sel. Comm. on Intel.

~~463~~ He progressively deteriorating position of the ethnic group reflected the fact that none of the nations who were aiding them seriously doubted that they realize their objective of an autonomous state. A CIA memo of March 22, 1974 states that ally's and the United States position clearly: "We would think that [our ally] would not look with favor on the establishment of a formalized autonomous government. [Our ally] like ourselves, has seen benefit in a state of situation . . . in which [our ally's enemy] is militarily weakened by [the ethnic group's] refusal to relinquish its semi-autonomy. Neither [our ally] nor ourselves wish to see the matter resolved one way or the other."

~~464~~ The CIA had early information which suggested that our ally would agree to the ethnic group the minute he came to an agreement with its enemy over border disputes. Two months after initiating the project a CIA memo of Oct. 17, 1972 states: "[Our ally] has apparently used [another government's] Foreign Minister to pass word to [his enemy] that he would be willing to allow peace to prevail [in the area] if [his enemy] would publicly agree to abrogate [a previous treaty concerning their respective borders]. In addition, CIA memos and cables characterize our ally's views of the ethnic group as 'a card to play' in this dispute with his neighbor. And a CIA memo of March 22, 1974, characterizes the ethnic group as

over our head. No explanation for all this. We appeal you and USG intervene according to your promises and not letting down ally, to save [ethnic leader's] life and dignity of our families, to find honorable solution to our problem." On that same day the Chief of Staff sent the following cable to the DCI: "Is headquarters in [Washington] Kissinger's office on this; if USG does not handle this situation [it] may be which will avoid giving the [ethnic group] the impression that we are abandoning them they are likely to go public. [Our ally's] action has not only shattered their political hopes; it endangers lives of thousands." The COS proceeded to make suggestions for what the USG could do to help and ended with the remark "it would be the decent thing for USG to do."

⁴⁷⁰Also on March 10, 1975 the following letter arrived from the leader of the ethnic group to Secretary of State, Henry Kissinger: "Your Excellency. Having always believed in the peaceful solution of disputes including those between [your ally and his enemy] we are pleased to see that their two countries have come to some agreement. . . . However, our hearts bleed to see that an immediate by product of their agreement is the destruction of our defenseless people in an unprecedented manner as [your ally] closed its border and stopped help to us completely and while [his enemy] began the biggest offensive they have ever launched and which is now being continued. Our movement and people are being destroyed in an unbelievable way with silence from everyone. We feel your Excellency that the United States has a moral and political responsibility towards our people who have committed themselves to your country's policy. In consideration of this situation we beg your Excellency to take action as immediately as possible on the following issues: 1) Stopping the . . . offensive and opening the way for talks between us . . . to arrive at a solution for our people which will at least be face saving. 2) Using whatever influence you have with [your ally] to help our people in this historically tragic and sad moment and at least in such a way that our people and [army] could maintain some livelihood and perform at least partisan activity in [our area] until our problem is also solved within the framework of an [overall] agreement. Mr. Secretary, we are anxiously awaiting your quick response and action and we are certain that the United States will not remain indifferent during these critical and trying times . . ."

A CIA cable from the COS to the Director on 22 March 1975 states: "No reply has been received from Secretary of State Henry Kissinger to the message from [the ethnic leader?] . . . The two additional messages received by radio from [his] headquarters are for 'armed this morning . . . and underscore the seriousness of [their] situation, the acute anxiety of the leaders and their emotional appeal that the USG use its influence with [our ally] to get an extension of the cease fire. This would permit the peaceful passage of . . . refugees to asylum . . . Hence, if the USG intends to take steps to avert a massacre it must intercede with [our ally] promptly." Interview with CIA official, by J. Boos, Oct. 18, 1975, copy on file with Sel. Comm. on Intel.

470 One 200,000 refugees managed to escape into our ally's country. Once there, however, neither the United States nor our ally extended adequate humanitarian assistance. In fact, our ally was forced to forcibly return over 40,000 of the refugees and the United States government refused to admit even one refugee into the United States by way of political asylum even though they qualified for such admittance. . . .

471 The political action program included the distribution of 50,000 campaign-type buttons identifying the wearer as a supporter of Roberto's FNLA.

472 The United States has found itself in similar situations on other occasions. Having supported colonial power policies in previous years, they are constrained from developing a rapport with indigenous independence movements. The Soviets, however, are not similarly inhibited. Once the colonial power relinquishes control, the well-organized, well-financed, Soviet backed group is ready to step into the breach. The United States is forced at that point to scurry around looking for a rival faction or leader to support. The U.S. has often chosen leaders who had a prior relationship with the colonial power and whose nationalist credentials are thus somewhat suspect, or leaders who have spent most of their time outside the country waiting for the colonial power to depart. The point is that many of the U.S.-backed groups begin with a variety of factors working to their disadvantage.

473 The task force was composed of African exiles within the Department of State, DoD officials, CIA officials and others. Officials from the Department of State have told this Committee that the majority of that task force recommended diplomatic efforts to encourage a political settlement rather than inter-

hostile vessels in the last ten years, over 140 possible detections, and at least three press exposures. Most of the submarine carry nuclear weapons.

The program clearly produces useful information on our adversaries' training exercises, weapons testing, and general naval capabilities. It is also clear, however, that the program is inherently risky. Committee staff review of the program suggests if both Congress and the Department of the Navy were sufficiently motivated to provide the funds, technical capabilities could be developed which would make possible the acquisition of the same data through less hazardous means.

The Navy's own justification of the program as a "low risk" venture is inaccurate and has, therefore, not met or resolved the Committee's misgivings. 477 Documents provided the Committee by the Defense Department indicate that, while risk assessments are made prior to operations, they are ritualistic and pro forma. In fact, their mission risk assessments do not vary despite constant changes in political conditions, information sought, distance from enemy shores and hostile forces, and our adversaries' ability to detect the presence of U.S. submarines. During the conduct of missions these submarines have conducted, the Navy has assessed military risk as anything but "low."

The Committee is, therefore, troubled by the completely pro forma nature of the mission risk assessment as it is presently accomplished.

Just as the Navy's assurances that the program is secure are inconsistent with the collisions, apparent detections, and press stories, their claims that the sensitive missions are closely monitored are belied by the scant tactical guidance given commanders and regular communications gaps. Once a U.S. submarine enters the 12-mile limit of another nation, communications security and the lack of certain technical capabilities make it impossible to independently verify the location of a submarine at any given moment. Many of these difficulties result from factors which are inherent in the nature of this covert operation.

Naval inquiries into collisions and other "untoward incidents," if held at all, are almost always conducted at a low level, effectively keeping policy-makers in the dark on changing operational conditions. Thus, it took a field-initiated, low-level investigation, conducted after three collisions in 1970, to determine that pre-mission training and operational guidelines for U.S. submarines on this type of sensitive mission needed revision and up-grading. If Washington-based

focused on international narcotics traffic and racism, and even targeted Americans. The Committee's preliminary investigation reveals at least one new area of non-political and non-military emphasis in international intercept—economic intelligence. Communications interception in this area has rapidly developed since 1972, partly in reaction to the Arab oil embargo and the failure to obtain good information on Russian grain production and negotiations for the purchase with American corporations.

The Committee is not convinced that the current commercial intercept program has yielded sufficiently valuable data to justify its high cost and intrusion, however inadvertent, into the privacy of international communications of U.S. citizens and organizations. Inasmuch as the technical complexity of the program defies easy or quick evaluation, the Committee is hopeful that a permanent oversight mechanism will closely and comprehensively scrutinize the operation to determine whether the risks are necessary and acceptable.

Manipulation of the Media

The free flow of information vital to a responsible and credible press has been threatened as a result of CIA's use of the world media to cover and for clandestine information-gathering.

There are disturbing indications that the accuracy of many news stories has been undermined as well. Information supplied to the Committee suggests that some planned falsified articles have reached readers in the U.S. 495

Intelligence agencies in long prized journalists as informants and identity covers. Newsmen generally enjoy great mobility, and are often admitted to areas denied ordinary businessmen or to suspected intelligence lives. Not expected to work in one fixed location both bona fide journalists and masquerading intelligence officers can move about without arousing suspicions. They also have extraordinary access to important foreign leaders and diplomats.

CIA, as no doubt every other major intelligence agency in the world, has manipulated the media. Full-time foreign correspondents for major U.S. publications have worked concurrently for CIA, passing along information received in the normal course of their regular jobs and even, on occasion, travelling to otherwise non-newsworthy areas to acquire data. Far more prevalent is the Agency's practice of re-

"MR. COLBY. It is."

The Committee has examined both technical and non-technical risks-gathering programs and has concluded that the risks accompanying them are often unacceptably great; that information obtained often does not justify the risk; the policy-makers have been insensitive to dangers, especially of the violation of U.S. citizens' rights; and, that there are inadequate policy-level mechanisms for the regular review of risk assessment.

A highly technical Department of Navy submarine reconnaissance program, often operating within unfriendly waters, has experienced at least 9 collisions with

Given these factors, the Committee urges a thorough review of the program's product and hazards, to avert another *Pueblo*, or worse, and to insure that important intelligence collection continues with significantly less risk than presently exists.

The National Security Agency (NSA) systematically intercepts international communications. Both voice and data messages are intercepted by NSA officers and cable. NSA officers and the Director of Central Intelligence concede that messages sent to and from American citizens and businesses have been picked up in the course of gathering foreign communications intelligence. They maintain, however, that these messages are small in number and usually discarded in the course of processing. (NSA case #493)

CIA acknowledges that "stringers" and other writers whom the Agency has a relationship are often directed to insert Agency-composed "news" articles into foreign publications and wire services. U.S. intelligence officials do not rule out the possibility that these planned "forgeries" may find their way into American newspapers from time to time, but insist that CIA does not intentionally propagandize in this country. **CIA insensitivity to** the possibility of its advertising news digested by Americans is indicated by its frequent manipulation of Reuters wire service dispatches—which regularly appear in U.S. media. Because Reuters is British, it is considered fair game.⁴⁹⁹ A number of CIA officers employed by U.S. and foreign publications write nothing at all. Their journalistic affiliation is a "cover"—a sham arrangement making possible full-time clandestine work for the Agency. With these arrangements, the employer's cooperation has been obtained.⁵⁰⁰

After the Washington Star-News discovered a CIA-media relationship in 1973, Director Colby ordered a review of these practices. Subsequently, the Agency terminated the informant relationships of five full-time employees of American periodicals. Stringers and freelancers are still on the payroll, despite their periodic reporting for a U.S. media usually unaware of the writer's CIA connection.⁵⁰

Director Colby, citing the Agency's continuing need for reliable information and the increasing reluctance of private firms and the government to provide cover, maintained that the recent reforms have reduced risks to an acceptable level.	to circumvent jurisdiction of the FBI and the Department of Justice. Of these activities, CIA's role as a source of ordi- nary as well as exotic equipment is perhaps the most troubling and publicized. The Agency has loaned such traditional gear as body protectors, billy clubs, mace, and similar civil disturbance paraphernalia. Most of the equipment was provided during the height of the Vietnam War movement and may have been used by local police during the May 1971 demonstrations in Washington. More exotic loans consisted of decoders, clandestine transmitters, analyzers, and other wiretapping devices. A staff examination of these practices reveals that CIA officials usually provided equipment on a no- questions-asked basis, did not require the production of court orders for eavesdropping gear, and exercised virtually no control over the loaned items. The record suggests that on one occasion, CIA- loaned equipment was used in an illegal wiretap. In June, 1971, Mr. Kenyon F. Ballew was severely wounded during a raid on his apartment by agents of the Division of Alcohol, Tobacco and Firearms, sup- ported by police from Montgomery and Prince Georges Counties in Maryland. The raid was conducted pursuant to a Federal search warrant for possession of suspected firearms and hand grenades. Plainclothes agents and police officers broke down the door to the apartment when Mr. Ballew failed to answer their knock. Mr. Ballew, a gun col- lector, picked up a pistol, was shot, and is now perma- nently disabled. He is partially paralyzed, walks only with the aid of a brace and cane, speaks with diffi- culty, and still has the police bullet lodged in his brain. Mr. Ballew was never prosecuted for any gun con- trol violations. The case received a large amount of publicity and was the subject of a number of investi- gations of alleged police misconduct. Mr. Ballew brought suit pursuant to the Federal Torts Claim Act and received an adverse judgment from the courts in February, 1975. A CIA Office of Security employee assigned to liai- son with the Montgomery County Police Department told staff that, in a conversation with a police inspector on the Ballew case, the possible use of CIA-loaned bugging equipment was revealed. He was advised that police intercepted a telephone conversation in which plans were outlined to "kill a cop." However, neither the affidavit in support of the search warrant, the	Director Colby, citing the Agency's continuing need for reliable information and the increasing reluctance of private firms and the government to provide cover, maintained that the recent reforms have reduced risks to an acceptable level. d: CIA Presence in the Executive Branch CIA personnel may be found in a host of U.S. departments and agencies, in the National Security Council, and in the White House itself. Typically, their Agency affiliations are unknown to colleagues and to all others, except one or two leader- ship figures.⁵⁰³ They sit on interagency panels whose members are unwitting.⁵⁰⁴ In some cases these panels already include another, official, CIA representative, giving CIA undue representation.⁵⁰⁵ Some of them work in positions involving evaluation of CIA's work product and proposals.⁵⁰⁶ These individuals are "detailees"—CIA employees on loan to the Executive, usually at the latter's re- quest. They include all types, from gardeners and typ- ists, to intelligence analysts and practitioners of covert action.⁵⁰⁷ Detailees are requested for a variety of reasons—because the White House wants to circumvent Con- gressional budget ceilings, because there are no other available secretaries with security clearances, because CIA professional expertise is highly regarded, or be- cause the position had always been staffed by an Agency officer.⁵⁰⁸ The Committee has found no indications that CIA detailees are instructed to make clandestine reports to headquarters on the inner workings of the host- employer. Nor is there credible evidence that they are asked by CIA to perform in any manner which is incon- sistent with the best interests of the host. Nonetheless, the Committee believes that detailing as presently practiced reflects an unwise policy. At best, intelligence personnel such as electrical help are diverted from CIA duties thus frustrating the budget allocating intent of Congress. A far worse scenario is that of CIA officers assigned to such posts as the National Security Council where they are sus- ceptible, despite all good intentions, to substantial conflicts of interest on the most sensitive issues. The latter problem is compounded by the fact that the de- taillee's background often is unknown to NSC col-	Footnotes: ⁴⁸⁷Each monthly mission schedule forwarded to the Joint Chiefs of Staff and the Forty Committee for ap- proval has an alphanumeric designator attached for mission risk assessment. By far the most frequently assigned is "4 A 4"; the first digit, "4", stands for "low military risk"; the second alpha character, "A", stands for "high intelligence value" and the third digit, "4", stands for "low political risk." For a mission that has been assessed "low military risk factor other than "low political risk" evaluation is better, not only because of the low risk of political fallout, but also because of the low risk of military risk such as presence of enemy forces in the area, distance from enemy shores, political conditions, etc., but also by a variety of statements by Navy personnel who have conducted studies on this program. ⁴⁸⁹Comm. Hearings. "MR. ASPIN. . . Does the National Security Agency monitor telephone calls between American citizens and foreigners abroad?" "MR. COLBY. The Agency does monitor foreign communications." "MR. ASPIN. Does it involve a U.S. citizen at one end?" "MR. COLBY. On some occasions, that cannot be separated from the traffic that is being monitored. It is technologically impossible to separate them." "MR. GIAMMO. Obviously, we know that in other countries you undoubtedly perform all kinds of inter- cepts." "MR. COLBY. Incidentally we pick up material about Americans abroad, yes." "MR. GIAMMO. That's the point I am trying to get at. Did you say that incidentally you are also intercepting American citizens?" "MR. COLBY. I did not want to say that we never, never covered any American citizens abroad. If I have made a mistake in what I said, that we were not—that we incidentally cover Americans in our foreign intelligence activities." "MR. GIAMMO. You incidentally cover Americans where?" "MR. COLBY. I say we do incidentally cover Amer- icans. I would like to get into a further description of this in executive session." <i>Ibid.</i> "Chairman PIKE. Does your system intercept the	Footnotes: ⁴⁸⁷Each monthly mission schedule forwarded to the Joint Chiefs of Staff and the Forty Committee for ap- proval has an alphanumeric designator attached for mission risk assessment. 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leagues who are also charged with CIA-related responsibilities.⁵⁰⁹

The Committee discovered detainees, whose Agency ties were closely held secrets, making recommendations of CIA covert action proposals to unwitting senior NSC officials. Such individuals also helped conduct the NSC's evaluation of the intelligence product, and in that capacity regularly compare CIA's performance with that of rival agencies.

These individuals have impressed staff as highly motivated professionals, acutely aware of the problems resulting from divided loyalties. Their integrity is not at issue. But neither the White House nor the CIA is well served by an unnecessary policy which invites cynicism and compromises the quality of Executive Branch oversight of the intelligence community.

e. CIA Relationship with U.S. and Foreign Police

In creating the CIA, Congress clearly intended to deny it any domestic police functions. Their fear that a super-secret, bureaucratically powerful spy agency might evolve into a domestic secret police, has not been realized, despite shortcomings in control and oversight.

Evidence in Committee files, however, indicates that during the late 1960's and early 1970's, CIA allowed itself to become involved in domestic police activity. In addition, the Agency undertook other police assistance activities which jeopardized the integrity of an otherwise legitimate and useful U.S. foreign aid program.

Association and Collaboration with U.S. Police

Notwithstanding its charter's clear prohibition against internal security functions, CIA has maintained relationships—many entirely appropriate—with various Federal, state and local law enforcement agencies. Questionable activities prior to the Hollzman Amendment to the Omnibus Crime Control and Safe Streets Acts of 1968, included the training by CIA of domestic police and loans of Agency equipment for domestic use. In return, local police departments cooperate with CIA on matters of concern to the Agency's Office of Security. Both activities appear to have been improper. The first violated the charter's ban on domestic police functions, and the latter tended

subsequent investigations, nor the transcript of the civil suit reflected the existence of any wiretap. Mr. Ballaw's case is now on appeal, and if there had been an illegal wiretap, he may be entitled to a new trial. While the Department of Justice's CIA Task Force has been made aware of this possible wiretap for months, it has apparently refused, both to act upon it,⁵¹⁷ and to notify the attorneys in the case.

CIA Involvement with Foreign Police

From the early 1950's until late 1973, CIA operated a proprietary, International Police Services (IPS), in the Washington, D.C. area. It had the dual purpose of improving allies' internal security, and evaluating foreign cadets for pro-U.S. orientation, which might later enable CIA to recruit them as intelligence assets.

In the early 1960's the Agency for International Development's Office of Public Safety (AID-OPS) became actively involved in foreign police training. OPS' 14 week course was augmented by an additional four weeks of training at IPS, pursuant to a contractual arrangement with AID. Students were not made aware that they were being trained at a CIA facility, and only a handful of AID officials, including the Director of OPS, knew of IPS' CIA status.

Instructors were asked to record names of students who demonstrated a pro-American attitude. It does not appear, however, that the CIA attempted to recruit students while in the United States, although CIA documents indicate that with the cooperation of OPS, lists of OPS and IPS students were made available, along with biographical information, to CIA components for operational use.

As many as 5,000 foreign police officers from over 100 countries, many of whom have become high officials, unwittingly received training from the CIA. The position of these foreign police officers may have been damaged when, in 1973, IPS was revealed as a CIA front.

In addition to damaging the credibility of these foreign police officers, CIA's apparently unnecessary involvement with a legitimate foreign aid program could have seriously undermined that program from a propaganda standpoint.⁵²³ Despite these realities, AID-OPS continued its relationship with IPS until late 1973. Department of State and AID officials should review these practices and develop alternative methods of administering foreign aid programs without CIA involvement and support.

telephone calls of American citizens?

"Gen. ALLEN: I believe that I can give a satisfactory answer to that question which will relieve the Committee's concern on that matter in closed session."

Although the Committee met for some four hours in Executive Session to take testimony from NSA Director Allen and Deputy Director Benson K. Buffham, primarily concerning the interception of international commercial communications, Gen. Allen apparently felt it necessary to clarify and elucidate that testimony in a follow-up letter to Chairman Pike on August 25, 1975:

"Dear Mr. Chairman:

"I am writing to provide additional clarification to the testimony I gave before your Committee on 8 August.

"At the present time, the telephone calls of U.S. citizens in the United States to a foreign location are not being monitored. The monitoring of telephone conversations of United States citizens in the United States to a location in the United States has never been authorized by NSA. Currently, we are not now monitoring any telephone circuit terminating in the United States.

"For several years prior to mid-1973 a few international radio-telephone circuits were monitored between the United States and foreign countries. This monitoring did include the calls of U.S. citizens as well as foreign nationals, and calls were sometimes selected for monitoring based on the name, telephone number, or a U.S. citizen provided us by another government agency. In the summer of 1973, the use of the names of U.S. citizens to select telephone calls was terminated and remains so.

"From mid 1973 until recently a search of our records reveals there were occasions where radio-telephone circuits between a foreign terminal and a U.S. terminal were monitored. On some occasions the monitoring was for the purpose of developing patterns of foreign communications use and, on yet other occasions, the monitoring was based on the foreign subscriber and the substance of the conversation was obtained. Our records indicate that in all of 1974, reports were made involving the substance of only eight telephone conversations, wherein a U.S. citizen might be presumed to have been conversing, and in these instances, only the foreign intelligence aspects of the conversation were reported, and the names of U.S. citizens were never used in these NSA reports.

This number may be compared with reports involving [a vast number of] other foreign communications carried on international circuits.

"The executive directives applying to these efforts state: a) The purpose of the signals intelligence activities of the National Security Agency is to obtain foreign intelligence from foreign communications or foreign electronic signals; b. Foreign communications exclude communications between or among American citizens or entities.

"I hope this letter will help clarify the matter." /s/ **Low Allen**, Lieutenant General, USAF, Director, NSA/Chief, CSS.

William E. Colby, Director of Central Intelligence, told members of the Committee staff at an October 25, 1975 meeting, that the Agency prints propaganda in the foreign press, including English-language newspapers, and is not to be inhibited by the possibility that these planted stories may be picked up by American news services, etc.

The Deputy Director of Operations at the CIA explained that the Agency wants as few people as possible to know the Agency's sources. Therefore, the CIA considers "stringers" and free-lancers to be free agents working for many employers and so there is no necessity for the CIA to inform a "stringer's" or free-lancer's publisher of his other employer (CIA).

An ex-CIA Chief of Station explained that "... our American media assets ... are given neither Agency guidance nor information which might influence a piece written for an American audience. These people are used entirely for intelligence gathering purposes, and are left free to write what they would have written had there been no connection with the Agency ... This method is quite different from our handling of foreign media assets, writing for foreign audiences, where Agency influence over the content of certain articles is selectively applied." He further states, "CIA will undertake no activity in which there is a risk of influencing domestic public opinion either directly or indirectly." But he turns around in the next sentence to say: "The Agency does have a responsibility for undertaking certain propaganda activities in foreign countries." Director Colby emphatically stated on October 25, 1975 to members of the Committee staff and Congressman Johnson that he had differences between AP and Reuters. I consider AP to be an American wire service and therefore off limits ... but Reuters is a foreign wire service." It was pointed

task is to evaluate the quality of intelligence sent to the NSC, including intelligence from his regular employer, the CIA. He maintains close contact with the CIA as part of his job.

There are, or have been, CIA detailees working at the White House including the Federal Executive Institute, Cabinet Committee on Price Stability, White House Joint Committee on Science, Office of Emergency Preparedness, Council on International Economic Policy and President's Foreign Intelligence Advisory Board, the Department of Justice and the Bureau of Narcotics and Dangerous Drugs, the State Department and the Agency for International Development, the Treasury Department, the Defense Department and the Defense Intelligence Agency, the Federal Aviation Administration, the Federal Energy Administration, the Vice President's Office, the National Security Council and the Commerce Department.



Secretary Kissinger before the Pike Committee: His comments were "at variance" with the facts.

3. Domestic Intelligence Investigations

Domestic intelligence carries with it two distinct types of risks. There are programs that by their very nature and method offend individual liberties and statutory rights. Then there are legitimate intelligence methods that are improperly applied, turning the law-enforcers into law-breakers.

a. Programs as Abuses

COINTELPRO was a series of covert counterintelligence programs aimed at identifying, penetrating, and neutralizing subversive elements in the United States. The program itself consisted of myriad activities, some carried out by FBI agents against persons and organizations considered subversive by the FBI. Careers were ruined, friendships severed, reputations sullied, businesses bankrupted and, in some cases, lives endangered.³⁶

The FBI justified this aberration from traditional law enforcement programs by stating that it was dictated by the mood of the times. The FBI, as implementors of the program, thereby became the barometer of the country's mood. Instead of fulfilling their statutory function of enforcing Federal laws,³⁷ evidence received by the Committee of FBI racism, bias, and strong conservative ideology hardly qualifies it to review people's politics. Moreover, the Constitution prohibits such a role and protects the very things FBI was attempting to punish.

COINTELPRO is only one example. Another would be programs grouped under "anticipatory" intelligence. FBI states: "Because the FBI's investigative responsibilities follow the contours of those entrusted to the Attorney General, the Bureau's domestic intelligence investigations are, of necessity, broader than investigations strictly designed to collect evidence for criminal proceedings. The FBI's domestic intelligence responsibilities have a distinct anticipatory, or preventive, purpose, requiring continuing investigative activity in cases wherein criminal conduct remains a future possibility. Whereas the evidence required to initiate an investigation under such a standard would obviously be something less than probable cause of a crime,³⁸ it would nevertheless be more than mere suspicion. The FBI itself states that advocacy of an ideology

out to Director Colby that Reuters, a British wire service, was frequently used by American media, but this fact did not change his mind. In an effort to assure that official Washington is not deceived by planted articles in the foreign press, CIA maintains high-level liaison with the Department of State and the U.S. Information Agency to identify spurious stories.

⁵⁰⁰The CIA's Cover and Commercial staff files show that in 1975 11 CIA employees used media cover with 15 news field companies (TV, radio, newspapers, and magazines). Five of these gave no general news impact; nine of no major general news influence; and one a proprietary.

⁵⁰¹When the CIA has tenuous relations with five full-time correspondents of major American news organizations, three of their employers were suitors according to William E. Colby.

⁵⁰²At the National Security Council, there are four CIA employees working as professional staff. Three of them are overt employees of the CIA, open employees. The fourth is an undercover employee, one who does not acknowledge the CIA as his true employer. Ironically, through committee staff interviews, the undercover employee was the only CIA detailee readily identified by his colleagues or subordinates.

⁵⁰³[Name deleted] sits on the Interagency Classification Review Committee (ICRC), representing the National Security Council staff, although he is actually detailed to the NSC staff from the CIA. The CIA also has a representative on the ICRC. [Name deleted] told the Committee staff that he does not tell other ICRC members of his true affiliation. The man who preceded [Name deleted] at the NSC was [Name deleted]. He also sat on the ICRC representing the NSC. And he was also a CIA detailee. Further, he was a key NSC staffer, but the only people at the NSC who knew that he was from the CIA were Dr. Kissinger and Alexander Haig.

⁵⁰⁴This Interagency Classification Review Committee rules on questions of declassification from the Executive branch agencies. These questions come up as a result of Freedom of Information Act (FOI) requests. If an FOI request is initially denied, the requester may appeal to the head of the Agency; and if that appeal is denied, he may appeal to the ICRC. Many of these declassification cases involve the CIA.

⁵⁰⁵The man who directed Operations CHAOS at the CIA is now detailed to the NSC staff as Director for Intelligence Coordination of the NSC staff. His

ment. The CIA details cover: communications technicians, biographic analysts, general illustrations, secretaries, clerks, couriers, laborers, telephone operators, graphic analysts, personal assistants, physical scientists, intelligence officers, operations officers, economists, administrators assistants, program analysts, chauffeurs, sky marshals, and signographers.

⁵⁰⁶The White House used CIA detailees to keep the total number of staff down, in contravention of Congressional appropriation staff ceilings. The NSC staff

"borrows" secretaries initially from the CIA, until their secretaries get clearances, but in many cases, the CIA secretaries stay at the NSC for years. Many executive branches, such as the Department of the Treasury, use CIA professionals as advisors to Secretaries, etc. And finally, the NSC staffer responsible for covert action proposals and approvals is almost always from the CIA's Directorate of Operations, which requests the covert actions. He has sole custody of all the Forti Committee's records.

⁵⁰⁷See previous note on a key staffer at the NSC who made recommendations on policy options. He therefore, was called on to make these recommendations on CIA policies to people who did not know of the current CIA affiliation.

⁵⁰⁸The Agency's position in this case is that the Agency was not involved beyond the loan of audio equipment, which may have been used against Mr. Ballew

⁵⁰⁹For example, the AID-OPS program was damaged considerably by allegations linking foreign police training to the CIA. In 1970, Dan Mitriane, a law enforcement officer of impeccable credentials and reputation, employed by AID as a Public Safety Advisor in Uruguay, was kidnapped and murdered by Tupamaro guerrillas. The Tupamaros alleged that Mitriane was a CIA "agent" and that Public Safety Advisors including Mitriane taught torture tactics to police. CIA documents indicate that although Mitriane may have had some contact with CIA officers stationed in Uruguay, he was not a CIA employee or informant. . . . Allegations of AID-OPS sponsored torture training, depicted in various press reports and the film "State of Siege," appear factually unsupported. However, this type of allegation had a tremendous propaganda impact which contributed substantially to the termination of AID-OPS in 1975.

alone is not sufficient grounds for classifying a group as subversive. Anticipatory domestic intelligence projects, however, do create serious problems on occasion. A few examples illustrate the point.

Lori Paton testified before the Committee on November 18, 1975. In 1974, Miss Paton, then a high school student, inadvertently wrote the Socialist Workers Party as an academic assignment. She intended to write to the Socialist Labor Party.

The FBI was conducting a mail cover⁵¹² on the SWP and intercepted Miss Paton's misdirected letter. They immediately began an investigation of her, and the attendant publicity in Miss Paton's small town caused her great mental anguish.

The Bureau's response was that the "FBI did not publicize the fact" of Lori Paton's investigation, though they had interviewed her school principal and the local police chief.

Assume, however, that Miss Paton had correctly written to the SWP, as many people undoubtedly have. That fact alone would apparently have been grounds for an anticipatory investigation, even though it is hard to imagine what crimes could be anticipated by writing a letter. In addition, the chilling effect on investigations have on First Amendment rights, including freedom of association, is painfully clear.⁵¹⁴

For those who do join SWP, the chill is likely to spread to employers. The Committee heard from one witness who feared FBI's inquiries about his employee, Bruce May, who was an SWP member, as well as punitive, mysterious, and . . . aggressive.

Trash covers are another odious form of anticipatory investigations. The IPS trash cover has already been discussed, save for a comment on command and control. When FBI personnel were originally asked about trash covers by Committee staff, they stated:

"We have not engaged in [trash covers] since July 1966 . . . We had no trash covers on the IPS." Two weeks later, at a Committee hearing, they corrected themselves. They stated that, while there was an FBI policy of not conducting trash covers, that policy was always followed.

Two memoranda show that the Bureau knew of the trash covers and recognized the risks in such a method. The concerns? The "potential harm to the FBI and the Federal Government, per se, far outweigh the potential information that could be expected."⁵¹⁹ It was not risks to an individual's right of privacy that concerned the FBI.

The use of informants, albeit an effective law enforcement tool, is a method of investigation which is particularly subject to abuses of Constitutional rights and rights of privacy.

In sum, Mr. Hardy acted as an "agent-provocateur." At one point, he attempted to halt the actual burglary because a conspiracy had been established. His FBI handling-agents insisted that the burglary be committed.

In the Hardy case, the informant-agent relationship was further complicated by political considerations. The defendants in a celebrated case in nearby Harrisburg, Pennsylvania, had recently been acquitted of all conspiracy counts. The FBI apparently felt that an overact such as an actual break-in would be required to insure a conviction, even though the alleged crime of conspiracy, which was the basis of later prosecution, appears to have been completed far in advance of the actual break-in.

It should be noted that Department of Justice attorneys were advised of this situation long before the break-in and did nothing to avert the course of events. The Committee investigated another example of lack of control over informants. The FBI used Robert Merritt as an informant on gay-related activities during the early 1970's. Merritt continues his activities as an informant at the Institute of Policy Studies. Merritt told the Committee that his FBI handling-agents instructed him to conduct break-ins, deliver unopened mail acquired illegally, and solicit and provide information to the FBI regarding homosexual proclivities of politicians.

Electronic Surveillance—The Kissinger Wiretaps
In the last half-century, electronic technology has revolutionized the science of investigations. These developments also mean that "Big Brother" may be watching.

In the spring of 1969, the Nixon White House was disturbed that extremely sensitive information regarding diplomatic relations and national security was leaking to the press on a fairly regular basis.

The apparent result of these consultations was the installation of a wiretap on the residence of a National Security Council station on May 9, 1969. Significantly, approval for this "national security" wiretap was not requested until May 10, 1969. The wiretap was requested by Col. Haig "on the highest authority" and was not approved by Attorney General John Mitchell.

No approval was ever sought for extensions of the wiretaps as they continued unabated and unsupervised. In addition, the FBI continued to report information which can only be characterized as political or personal.

In 1969, the FBI authorized an agent to send anonymous letters to the superior of Father Augustus Taylor, Jr., a Catholic priest, complaining of Father Taylor's speaking out on his television show against the war in Vietnam and of his public support of certain black organizations. Father Taylor's television show was subsequently cancelled and he was transferred. FBI COINTELPRO memoranda.

In 1969, the FBI approved furnishing information to a responsible Harvard University official that a student who was employed by the University was involved in Students for a Democratic Society (SDS) activities. Shortly thereafter, the student lost his job. FBI COINTELPRO Memoranda. . . .

More seriously, one program was carried out wherein an anonymous letter was set to the Black Panther Party accusing one of their members of being a police informant. FBI COINTELPRO Memoranda 00-448006-2308. Another program authorized sending a threatening letter to Huey Newton purporting to be from a follower of Eldridge Cleaver. FBI COINTELPRO Memoranda.

cally prominent people and individuals of the New Left.

The FBI agents who handled Merritt denied these allegations under oath. They stated that Merritt acted on his own.

The handling-agents stated that they terminated Merritt because they ascertained that he had provided false information on October 1, 1967, and had reason to believe he provided false information on other occasions in the past. If this was true, it does not fit with other facts. During the seven months that Merritt was an FBI informant, he provided over 100 reports on at least 25 people. He had, in fact, been categorized as "reliable" in FBI records.

No effort was ever made to "correct" the Merritt reports, by indicating that the information contained therein might be unreliable. No prosecutive actions were ever recommended as a result of Merritt's allegedly wrong actions. His efforts apparently fit well with intelligence operations.

Furthermore, Merritt told staff that he had committed numerous illegal acts at the direction of District of Columbus Metropolitan Police.

His FBI handling-agents stated that although they acquired Merritt from the Metropolitan Police Department, they never inquired as to the nature of his prior activities as a police informant. This attitude of "see no evil, hear no evil" appears to violate the seemingly rigid regulations of the FBI Manual, designed to effect the recruitment of responsible and reliable informants.

Conflicting testimony in the Merritt matter reveals the problem itself. Since FBI agents' instructions to their informants are, by necessity, given orally and without witnesses, it is difficult, if not impossible, to accurately fix responsibility for an informant's actions.

If the FBI agent is at fault, the problem becomes one of administrative command and control. If, however, the informant has gone bad, the problem is more difficult. For example, if an informant successfully instigates others to commit a crime, as in the Hardy matter, his FBI contact agent may overlook the informant's improper actions, because the informant is important to a case for which the FBI agent is likely to receive credit.

The risk that informants may use illegal methods is heightened when one considers the kind of person needed to infiltrate suspected criminal elements. Undoubtedly the problem James Adams, Assistant to the Director of FBI, testified before the Committee on November 18, 1975: "[T]he informants you develop

Hoover insisted on sending copies of the transcripts directly to the White House, so the President would be apprised of the "service" FBI was providing. Several risks were inherent in the FBI's national security wiretaps installed for Dr. Kissinger.

The first involved wiretapping United States citizens without prior judicial approval. These dangers were recognized by the Supreme Court in 1972. The Court held that electronic surveillance of domestic organizations of citizens was forbidden unless prior judicial approval was obtained.

Secondly, wiretapping State Department officials and members of the press, tends to stifle voices of criticism and dissenting views, and infringes upon freedom of the press.

Finally, the Kissinger wiretaps posed a risk that the FBI could become the tool by which an Administration in power obtains political information.

The Houston Episode

On October 9, 1975, Anthony Zavala, a former narcotics officer with the Houston Police Department who had been sentenced to three years' imprisonment on wiretap convictions, told the Committee of wide spread illegal police wiretapping in Houston, Texas from 1969 through 1972.

Mr. Zavala recognized that wiretapping had become "second nature to all," and that it was all discussed freely, and that everyone knew what was going on.

In 1973, Anthony J. Harris, United States Attorney for the Southern District of Texas, learned of allegations of wiretapping. He brought this information to the attention of the FBI in the fall of 1973 and requested that the Bureau investigate.

They did not. His requests continued. Finally, in April 1974, the FBI assigned one special agent to investigate the case. He filed reports, which according to Harris were "... notable only in their lack of substance, consisting largely of Xeroxed newspaper articles."

Footnotes:

³²⁷The primary programs were the Communist Party, U.S.A. program (commenced in 1956), the Socialist Workers' Party program (commenced in 1961), the White Extremist program (commenced in 1964), the Black Extremist program (commenced in 1967), and the New Left Domestic program (commenced in 1968). Lesser programs were the Puerto Rican Bomber program (1966), Operation Hoodwink

have been, of the climate of the times and restructure on a strict statutory basis.

"I think the history of the Bureau, and I would not bore you with details, has been one of responsiveness, an awareness of the climate of the times, and restructuring." Staff Interview with W. Raymond Wannall, FBI Assistant Director in charge of Intelligence Division; Robert L. Shackelford, Section Chief, FBI Intelligence Division, and David Ryan, Supervisor, FBI Intelligence Division, by J.B.F. Oliphant, R. Vermeire, J. Atkinson and E. Miller, Nov. 5, 1975, copy on file with Sel. Comm. on Intell.

³²⁸A case in point was the FBI's alleged targeting of Congressman Andrew Young, of Georgia, wherein the FBI requested Arthur Murrigh, a Special Agent, to surreptitiously obtain Congressman Young's personal stationery and handwriting sample. At the time, Congressman Young was a candidate for Congress. Comm. Hearings, testimony of W. Raymond Wannall, Nov. 18, 1975.

The FBI denies the aforementioned allegation. Furthermore, Black agents presently comprise approximately 1.2 percent of FBI agent personnel. Comm. Hearings, testimony of W. Raymond Wannall, Nov. 18, 1975.

³²⁹The Committee staff attempted to find out what triggered domestic intelligence investigations. The best answer appeared to be:

"MR. VERMEIRE: Investigation with respect to a particular crime?"

"MR. SHACKELFORD: Potential crime.

"MR. VERMEIRE: Potential; is there probable cause?"

"MR. SHACKELFORD: Of course not."

Probable cause, of course, has been the traditional test for arrest. . . .

³³⁰A mail cover is observing only what appears on the outside of an envelope or parcel, a practice which is carried out, of course, with the cooperation of postal authorities. The technique is perfectly legal.

³³¹The risk may even be intended. As Dean Louis Pollak put it: "While the official investigation long outlives its initially proffered justification—that is to say, reasoned suspicion or criminal activity imminent or actually carried out—at that point it is inescapable . . . that an important consequence, if not necessarily a purpose of the continuing investigation, will be the imposition of an official stigma on the political or search activity being carried out by the subject."

³³²"[T]he Washington Field Office feels it would be most unwise at this point in time to seriously con-

sider instituting a similar operation as encompassed by the utilization of this source [the trash cover]. Potential harm to the FBI and the Federal Government, per se, far outweigh the potential information that could be expected from such a reinstated operation." FBI Washington Field Office Memorandum to Headquarters, August 4, 1973.

54. [Name of group's members was known by the FBI to be violence-prone.]

55. [Name of group] were paid for with FBI funds.

56. The FBI's denial of this allegation appears in their Memorandum of Nov. 28, 1975.

57. The complete ineptitude of the FBI investigation of the Houston matter was brought out by Congressman Johnson's questioning of Mr. Farris:

"MR. JOHNSON. Can you tell me why in this case when you requested information with respect to investigation of other law enforcement agencies—in this case the Houston Police Department—you didn't get any response from anybody who was of real significance?"

"MR. FARRIS. . . . In all other cases they always responded; they always performed admirably; but in this case—the investigation of the allegations of illegal electronic surveillance by the police department in Houston—there was not only reluctance but obvious foot dragging."

"MR. JOHNSON. . . . What was the result of your contacts with Saxbe and Kelley and the others?"

"MR. FARRIS. To quote myself in other hearings, zip; nothing. Saxbe didn't answer; the Deputy Attorney General of the United States didn't answer; the Assistant Attorney General, Crime Section didn't answer. No one answered. I don't think they were listening."

"MR. JOHNSON. But you can characterize co-operation they received prior to that time as "zip."

"MR. FARRIS. It is not worthy of the name investigation, yes, sir."

"MR. JOHNSON. Once again, this is inconsistent with their response to other requests that you might make for other investigations?"

"MR. FARRIS. That is correct."

4. SALT—Political Control of Intelligence

Two principal reasons have been given for these restrictions: fear of leaks by officials seeking to influence U.S. SALT policy;⁵⁸ and the need for adequate time to determine a report's real significance, thus avoiding rash judgments on complicated technical issues.

This unusual procedure, invoked previously in such momentous situations as the 1962 Cuban missile crisis, has been strangely implemented this time. At times, the Secretary of State, the Director of Arms Control and Disarmament Agency, and key U.S. officials in SALT compliance meetings with the Soviets have not been aware of the existence of sensitive data suggesting Soviet cheating. Dissemination within several intelligence components has been haphazard and uncontrolled.⁵⁹

Two other problems with the "hold" process detract from the integrity of the intelligence product. NSC staff, for example, has influenced the timing and content of intelligence community publications.⁶⁰ While both high officials and working level analysts have been cut off from information for periods of time ranging from days to six months.

Dr. Kissinger's comments on this situation are at variance with the facts.

The spectre of important information, suggesting Soviet violation of strategic arms limitations, purportedly withheld for extended periods of time has caused great controversy within the Intelligence Community.⁶¹ In addition, it has raised questions as to the President's own knowledge of intelligence relevant to the "hold" procedure.

The problem continues as official fears of leaks and policymakers' penchant for a unified view on SALT goes on. Former State Department Bureau of Intelligence and Research Director Ray S. Cline, in testimony before the Committee, framed the issue: "I do think the Congress should be sure that the procedures for handling of strategic intelligence . . . should have certain checks and balances in them so that there is no possibility of suppression of information that is unattractive to policymakers." Cline concluded, "As I was leaving government, I found these procedures breaking down, and that is why I feel that the problem does deserve attention from the Congress."

Footnotes:

The judgment that a violation is considered to have occurred is one that will be made at the NSC level.

58. In one case, the head of the U.S. SALT team in Geneva, Dr. Alexis Johnson, was not told of a secret understanding made a year earlier of an agreed interpretation of the treaty. Johnson first learned of this from his Soviet counterpart. His cable to Washington is as follows:

"To: The White House for General Secord. Only From: Dr. Alexis Johnson SALT Geneva

"You will note that statement by Ustinov at yesterday's SCC meeting contained relief [sic—editor's note] refers to the agreed interpretive statements of May 26 and July 29, 1972. . . . We have no record of latter statement. Presume it was a result of Henry's exchanges with Dobrynin following Moscow summit. Would appreciate text or summary of contents, so that we will be in position to handle when Soviets again raise matter in present negotiations on destruction, dismantling and replacement procedures. Presumably Phil Odeen or Bill Hyland are familiar with subject. Warm regards, Johnson." June 7, 1973.

59. Admiral Zumwalt testified to the same effect. Comm. Hearings . . . Dec. 2, 1975.

60. Dr. Kissinger: "Whatever compliance issues existed at the time were brought to the attention of the Verification Panel." Kissinger press conference, Wash., D.C., Dec. 9, 1975.

61. From documentary evidence: The Verification Panel consists of the Assistant to the President for National Security Affairs, Deputy Secretary of State, Chairman of Joint Chiefs of Staff, Director of ACDA, and the Director of Central Intelligence. Intelligence on SALT compliance with is put on hold routinely goes to only the Secretary of Defense, Director of DIA, and Kissinger.

Dr. Kissinger: "All the decisions of the Verification Panel with respect to compliance have been unanimous."

From documentary evidence: One member wrote a memo on Jan. 14, 1975: "Upon further consideration following the recent Verification Panel meeting on SALT which addressed compliance issues, I am concerned about the decision not to raise the issue of Air Defense Testing . . . This testing could have major strategic implications and its impact, in my opinion, was not sufficiently assessed at this recent session of the Verification Panel."

The Panel also does not vote or make formal de-

Nowhere is the risk of corrupting intelligence greater than in recent efforts to restrict and shape important data on Soviet compliance with strategic arms agreements.

Staff investigation and examination of key documents reveal that these SALT treaties, which are of grave strategic significance, were consummated with out full intelligence input. That the prime U.S. official who sponsored the accords also effectively controls the verification of their feasibility, and that day-to-day intelligence analysis of compliance is hindered by arbitrary and inconsistent attempts to prevent leaks of SALT data.

The prime factor in this situation is Dr. Kissinger, with his passion for secrecy and his efforts to concentrate power and to consolidate ultimate control of important intelligence functions, through his various bureaucratic roles.

It is clear that in the final stages of the SALT talks, U.S. negotiators and duly authorized informants, U.S. negotiators, who had been key figures in previous treaty sessions. Only Russian technical experts were on hand. Dr. Kissinger's private talks with Soviet leaders in this period were not disseminated. Some officials assert that "ambiguities" which plague the accords, have been the result of U.S. policy-makers' self-imposed intelligence blackout at the critical moment.

The record indicates that Dr. Kissinger, U.S. architect of the accords, has attempted to control the dissemination and analysis of data on apparent Soviet violations of the SALT pact.

Although CIA, as the government's principal analytical arm, has both general and specific responsibility for the monitoring of SALT compliance, the Assistant to the President for National Security Affairs has advised the Agency to avoid any written judgments that the Soviets are in violation of SALT agreements. Such findings were to be privately communicated to the National Security Council, which, coincidentally, was headed by Dr. Kissinger.

When sensitive intelligence reports on Soviet compliance began to turn up with regularity, the National Security Council initiated the procedure of severely restricting dissemination of the information, by causing it to be placed in a "hold" status. Typically, the CIA Deputy Director for Intelligence would, in consultation with NSC staff, place an item on "hold" until Dr. Kissinger or his representative agreed to release it.

575 interview with U.S. intelligence officials. [Boxed text continues with details of CIA operations and personnel, including mentions of William Hyland, E. Shekoff, and various CIA staff members. The text is heavily redacted with black boxes.]

Dr. Kissinger: "There is nobody who has examined that the issue of compliance was not being adequately pursued. There is nobody who has objected to the name of the information."

Documentary evidence: Proctor memo of 13 July 1973... Colby letter to Richard Kennedy, Nov. 14, 1974... Kissinger: "All intelligence concerning alleged noncompliances was immediately disseminated to all the members of the Verification Panel..."

Dr. Kissinger: "The longest time an item was on hold was two months."

From documentary evidence: Some items were on "hold": 19 June 1973-8 Aug. 1973; 28 June 1974-17 Dec. 1974; 66 July 1974-17 Dec. 1974; 11 Sept. 1974-17 Dec. 1974; 23 Sept. 1974-17 Dec. 1974.

Dr. Kissinger: "No Soviet interference actions have interfered with our national means of detection."

From documentary evidence: Some important containment activities, as well as Soviets interfering with national means of verification.

349 Proctor: "On January 13, 1973 Dr. Edward Proctor, Deputy Director of the CIA for Intelligence, and a member of the SALT Steering Group, informed Acting Director of Central Intelligence Walters that 'It is now 24 days since reported to Dr. Kissinger on the detection of several' alleged Soviet SALT violations. Proctor noted that the 'hold' items had been restricted for so long as to raise suspicions 'that important information is being withheld' from the many people in the intelligence community who had related responsibilities. Proctor advised that 'there is little likelihood that it [the hold item] will be lifted soon.' [and that Mr. Odeen of Dr. Kissinger's staff 'would like to see a draft of the Monitoring Report with the item in it to recommend to Kissinger whether the Report should be published and whether it should have the item in it.' Note for the Record, July 13, 1973, Edward Proctor.]

349 Proctor: "I wrote on July 13 that 'Earlier this morning, I had discussed with General Walters and Mr. Colby the DCI's obligation via Watergate—to make sure that the President knew of the withholding of intelligence, was aware of the consequences of prolonged delay in informing others in the Executive and Legislative Branches, and nonetheless had approved the continuation of the restrictions.' Ibid. The President was never personally approached."

the village VOICE February 23, 1976

The Select Committee's Oversight Experience

If this Committee's recent experience is any test, intelligence agencies that are to be controlled by Congressional lawmaking are, today, beyond the lawmaker's scrutiny.

These secret agencies have interests that inherently conflict with the open accountability of a political body, and there are many tools and tactics to block and deceive conventional Congressional checks. Added to this are the unique attributes of intelligence—notably, "national security," in its cloak of secrecy and mystery—to intimidate Congress and erode fragile support for sensitive inquiries.

Wise and effective legislation cannot proceed in the absence of information respecting conditions to be affected or changed.² Nevertheless, under present circumstances, inquiry into intelligence activities faces serious and fundamental shortcomings.

Even limited success in exercising future oversight requires a rethinking of the powers, procedures, and duties of the overseers. This Committee's path and policies, its pluses and minuses, may at least indicate where to begin.

Access to Information

The key to exercising oversight is knowledge. In the case of intelligence agencies, this translates into a need for access to information often held by the agencies themselves, about events in distant places.

It is an uncertain approach to gathering facts, given the best of circumstances. The best of circumstances thereby become a minimum condition.

The Select Committee's most important work may

EDITORS' NOTE

Last week, The Village Voice printed almost in full the text of the second of three sections of the report on U.S. secret agencies, dated January 19, 1976, prepared by the House Select Committee on Intelligence, chaired by Congressman Otis Pike of New York. That second section contains the investigative record of the Committee. As noted in our introduction, we could not publish the third section of the report—a section on recommendations—because the Committee had not written it. And we did not choose to publish the first section because it dealt not with the Committee's findings but rather with its frustrations as an investigative unit.

Herewith we are publishing the text of that first section because of the perspective it provides for understanding the reaction of Secretary of State Henry Kissinger, the White House, the secret agencies, and the Pike Committee itself to publication of the report and to the fact that it appeared exclusively in the Voice. By far, the greatest outrage has been expressed not toward those whose mismanagement, cynicism, and downright lawlessness have made a scandal and a disaster of our intelligence operations, but toward those in the Congress and the media who uncovered and reported the facts. The first section of the Pike Papers helps explain this inverted response. It tells of repeated efforts by, above all, Mr. Kissinger and by the White House, the CIA, Senator Henry Jackson, and others to contain, obstruct, delay, and if possible derail the Select Committee's investigation. It also tells some of the effects of these efforts.

In the end, the obstructionists did not succeed. But the turmoil itself and piecemeal leaks tend

Ford stated: "I will make available to the Senate and House Select Committees these [Rosenfeld Commission] materials, together with other related materials in the executive branch." He went on to say: "So there's not going to be any possibility of any cover-up because we're giving them the material that the Rockefeller Commission developed in their hearings, plus any other material that is available in the executive branch." (Emphasis added.) President's News Conference, Wash. D.C., June 10, 1975.

The following statement by the Chairman, on November 14, 1975, with reference to a subpoena of State Department documents, is typical:

"Chairman PIKE: That troubles me, Mr. McClory. The fact is that three days after the subpoena was due, we have nothing. You have had phone calls. Mr. Donner and Mr. Field have had phone calls. The President has not asserted executive privilege, but he hasn't done it."

The Committee also discovered what Chairman Pike described as the "dribble treatment," where one or two documents were delivered each day over the course of several weeks. This was a particularly subtle impediment, as it gave the executive branch an opportunity to deny that it was withholding information, while at the same time delaying the Committee's work.

In the domestic intelligence investigation, Drug Enforcement Administration documents, which had been requested for over three months, were opened for Committee "inspection" 48 hours before a hearing on DEA intelligence. Even then, a subpoena had been necessary to obtain information. The staff was not given access to the 17 so-called Kissinger wiretap materials until 24 hours before Dr. Kissinger appeared before the Committee, and that took place only after lengthy negotiations. (Justice Department memorandum relating to the 17 wiretaps are printed as pp. 1X of the Comm. Hearings, Part 5.)

well have been its test of those circumstances, testing perhaps for the first time what happens when Congress unilaterally decides what it wants to know and how it wants to know it.

~~The Executive branch has been accused of intelligence agencies and the Executive that full cooperation would be assured. The credibility of such assurances was important, since almost all the necessary materials were classified and controlled by the executive branch. Despite these public representations, in practice most document access was preceded by lengthy negotiations. Almost without exception, these negotiations yielded something less than complete or honest access.~~

~~In short, the words were always used of cooperation; the reality was delay, refusal, missing information, and a lack of candor on the part of the Executive branch.~~

The Committee began by asserting that Congress alone must decide who, acting in its behalf, has a right to know secret information. This led to a rejection of Executive "clearances" or the "compartmentalization" of our staff. The Committee refused, as a matter of policy, to sign agreements. It refused to allow intelligence officials to read and review our investigators' notes, and avoided canned briefings in favor of primary source material. The Committee maintained that Congress has a right to all information short of direct communications with the President.

Our ability to abide by these policies has been a mixed record.

On the plus side, an aggressive pursuit of facts and a willingness to back up this pursuit with subpoenas produced some unprecedented results. As an example, never before had either the Executive or Congress put together a ten-year review of covert action projects. By subpoena—which, unfortunately, had to be taken to the brink of contempt enforcement—the staff of the Committee analyzed all official covert action approvals since 1965, and reported its results to the Committee in a closed hearing.⁹ That presentation was one of the more interesting and accurate pictures of U.S. covert policies yet assembled, and was of no small value to our findings. Other examples appear throughout the remainder of this report.

Nonetheless, if that is the positive side, it was offset by the extraordinary efforts that were required, even in a climate favorable to reviewing past Executive conduct, to identify and obtain documents.

It is a commentary in itself that subpoenas were necessary.

to focus attention on the clash of interests rather than the substance of the Committee's findings and still threaten to dilute its cumulative impact.

In the following text, space limitations require us to delete some non-substantive references from the footnotes. Therefore, footnotes are not numbered consecutively; but the numbering follows the report's throughout.

It is a further commentary that much of the time subpoenas were not enough, and only a determined threat of contempt proceedings brought grudging results.

Footnotes:

¹It is interesting to note that, despite volumes of literature, public utterance, and court cases on the subject, there are no clear definitions of what national security is. E.g., Note 87 Harv. L. Rev. 976 (1974); Becker, *The Supreme Court's Recent "National Security" Decisions: Which Interests Are Being Protected?* 40 Tenn. L. Rev. 1 (1972).

²Justice Van Devanter, speaking for a unanimous Supreme Court, wrote that the Congressional "power of inquiry—with process to enforce it—is essential and appropriate as an auxiliary to the legislative function." *McGrain v. Daugherty* (1972).

Early in the history of our republic, the power was accompanied by "instructions to inquire into the condition of the various executive departments, and the ability and integrity with which they have been conducted." 13 Cong. Deb. 1057, 1067, (1836).

~~In a letter to the Chairman dated October 1975, Secretary of State Kissinger stated: "I have no desire to keep anything from the Select Committee with regard to the Cyprus crisis or any other subject." Letter to Chairman Pike, from Dr. Kissinger, State Dept., Oct. 14, 1975.~~

~~In a second letter to the Chairman, dated November 3, 1975, Dr. Kissinger again pledged his cooperation: "Let me reiterate that my intention is not to withhold any information of use to the Committee. . . . I remain determined as ever to do everything possible to assist the Committee in its difficult and important task." Letter to Chairman Pike, from Dr. Kissinger, State Dept., Nov. 3, 1975.~~

At a news conference on June 10, 1975, President

The Chairman's comments on September 29, 1975, in a discussion of proposed agreements with the Executive branch, illustrate the point:

~~"Chairman PIKE . . . You thought we had an agreement with the President two weeks ago—or a week and a half ago—and we adopted your proposals in order to get that agreement."~~

~~"Having adopted your proposals, they said, 'Well, that is the first time, now we will come back for some more.' They have now come back for some more."~~

~~"You want us to adopt these proposals. You keep seeing huge cooperation just around the corner and it is not there, and it has not been there."~~

At a Committee meeting early in September, the Chairman described the Committee's experience thus far with executive branch cooperation:

~~"Here is what we run into . . . Nothing is ever released—things just are not delivered. They very carefully do not refuse, but the language is always the language of cooperation—the fact is the fact of non-production. . . ."~~

A month later, the degree of cooperation had noticeably improved. As the Chairman stated:

~~"I think we all know what is going on here. You asked that we wait another week—and we can wait for another week. You say that we ought to be concerned with the official statements and, as we have indicated from the day I got on the Committee, the official statements always promise cooperation. There has never been an official statement which says, 'In no way are you going to get this information.' But the fact of the matter is that we don't get the information."~~

~~"The Committee did accept the assistance of the FBI in conducting background investigations of its staff prior to hiring. All decisions, however, concerning the members of the Committee's staff and their work were made by the Committee."~~

The Director of Central Intelligence requested that the Committee require its staff to sign secrecy oaths comparable to those which the CIA requires of its own employees. The Committee refused. However, each member of the staff was obliged by the Committee to sign an "Employee Agreement."

"Compartmentation" is a system employed by the intelligence agencies to restrict the distribution of information even among officials with security clear-

ances. The justification for compartmentation is described in the following excerpts from a letter to the Chairman from CIA Director Colby, on July 28, 1975:

"National Security Council Intelligence Directive No. 1 (17 Feb. 1972) instructs the Director of Central Intelligence to . . . develop and review security standards and practices as they relate to the protection of intelligence and of intelligence sources and methods from unauthorized disclosure. Since the National Security Act did not provide for an authority corresponding with the DCI's responsibility in this area, the Directive provides that the Members of the U.S. Intelligence Board are responsible for: 'The supervision of the dissemination of security intelligence material.' The Director of Central Intelligence, acting with the advice of the U.S. Intelligence Board, has promulgated a number of directives, regulations, and security manuals, related to the protection of foreign intelligence and foreign intelligence sources and methods." Letter to Chairman Pike, from Mr. Colby, CIA, July 28, 1975.

⁹This report resulted from a subpoena of documents in possession of the "Forty Committee," which is a National Security Council subcommittee that approves covert action.

On November 14, by a vote of 10 to 2, the Committee approved a resolution citing Dr. Kissinger in contempt of Congress for his failure to comply with the Forty Committee subpoena. The report accompanying the resolution (94-693) was filed December 8. On December 10, after negotiations with White House officials, the Chairman informed the House that substantial compliance had been obtained, and the Committee's report was recommitted.

1. Delay

The record of subpoenas is worth reviewing. It began on August 5, 1975, when an Assistant Secretary of Defense was asked to appear as a witness and bring with him the document by which the National Security Agency (NSA) was set up. It was a simple and logical request. The Defense Department controls NSA; the Committee was holding hearings on intelligence budgets; NSA has the biggest budget; and the Committee wanted to see the authority by which NSA operates.

Footnotes:

¹In August 5, 1975, the Committee received testimony from Dr. Albert C. Hall, Assistant Secretary of Defense (Intelligence):

"Chairman PIKE. Well, Dr. Hall, we did make a formal request that you bring this piece of paper creating the National Security Agency with you and you tell us that you want us to have everything we need but you didn't bring it. Why?"

"Dr. Hall. We have to get clearance for releasing this material to you, sir."

"Chairman PIKE. Here we are representing the legislative branch of Government, asked to appropriate hundreds of millions of dollars to a certain agency and we are having difficulty finding the statutory authority for that agency even to exist. Now, isn't that ridiculous?"

²Letters were sent to CIA on Aug. 18, 1975; Aug. 19, 1975; Aug. 27, 1975; and Sept. 5, 1975. State Department requests were sent on Aug. 19, 1975.



House Select Committee Chairman Otis Pike: He got the "dribble treatment"—one or two documents a day.

³NSC Items Not Furnished—Cyprus and Mid-East War

a. Nothing was furnished, unless NSC maintains that CIA and DCI documents transmitted to HSC via NSC are reports provided NSC by U.S. agencies.

b. Nothing furnished."

¹⁹These were the National Security Agency and the CIA.

2. Cut-off

This problem was soon dwarfed by a new tactic—the cut-off.

On September 12, 1975, the President, or someone using his name, cut off the Committee from all classified information. As if that was not enough, his action was accompanied by a demand that we immediately turn over all classified materials from our own internal files.²¹

The reason? The Congress, through this Committee, had passed judgment, after lengthy deliberation of the merits, on whether four words "classified" by the Executive branch could be told to the American people.²²

The Executive, by its legally questionable reaction,²³ had now set aside any immediate subpoena problems, and the public hearing problems as well.

In background, a hearing on September 11, 1975, had reviewed intelligence performance with respect to the Mid-East war. In 1975, the result was shocking. In the words of a CIA document, "the principle conclusions concerning the intelligence of hostilities reached and reiterated by those responsible for intelligence analysis were—quite simply, obviously, and surely—wrong."²⁴

That same document had verbatim quotes from two intelligence bulletins that were moderately favorable and from five bulletins demonstrating that intelligence estimates were embarrassingly wrong. The two favorable quotes were declassified and read into the record.²⁵ The five embarrassing quotes, containing the same type of information, were not declassified by CIA.

The Committee objected.²⁶

The CIA returned that afternoon to report that after all, the five quotes could be declassified.²⁷ How-

The official did not bring the document. He did not have "clearance" to it.¹⁰ For this elementary piece of information, the Select Committee was forced to resort to the first of its many subpoenas. It is worth noting that the subpoena was promptly honored, which raises the question why the document was not delivered in the first place.

By late August, the Committee was preparing for hearings to review what kind of intelligence our money buys! For events were chosen for hearings: the 1973 Mid-East war, the 1974 coup, the 1974 Portuguese coup, and the 1968 Tet offensive in Viet Nam. During August and early September there were repeated requests for documents and interviews.¹³

In some cases, we were given heavily "sanitized" pieces of paper. "Sanitized" was merely a euphemism for blank sheets of paper with a few scattered words left in, often illegible, sometimes misleading, and usually inconclusive.¹⁴ In some cases, notably as to the 1974 coup in Portugal, there was an absolute refusal to provide anything, until early October.

As a last ditch effort, with hearings approaching, the Committee turned once again to its subpoena power. On September 10, 1975, it subpoenaed materials from the three major intelligence agencies and the National Security Council.¹⁵

What were the materials that forced the Committee to resort to the force of law? Were they the names of agents? No. Were they descriptions of secret intelligence techniques? No. They were, simply, copies of intelligence publications that had been circulated in the executive branch during the week preceding the events that we were examining.¹⁶ Documents circulated literally to hundreds, if not thousands, of people. Were they turned over by the date specified in the subpoena? Not completely.

The three intelligence agencies supplied some of their publications.¹⁷ Dr. Kissinger, as Assistant to the President for National Security Affairs, refused to turn over a single piece of paper from reports provided to the National Security Council during the weeks in question.¹⁸

By the time hearings on intelligence results began in mid-September, only two agencies had substantially complied with our subpoenas.¹⁹ More than a month would pass before a good faith effort at compliance was forthcoming from the National Security Council

1975; Sept. 8, 1975; and again on Sept. 8, 1975. Requests were forwarded to the Defense Department on Aug. 13, 1975; Aug. 19, 1975; Sept. 8, 1975; again on Sept. 8, 1975; and Sept. 9, 1975.

¹⁴The last two pages of one set of documents were typical deletions. The first page was apparently a cable. It was blank, except for the following across the top: 3/ND/DOLL:VNM/T-0144-65G TRANS.

LATED DECRYPT VN/AC/VN NR 1 Y 301300G FM JIB TO CQ INFO BHM STOP CNMB 301119 5610M Tol: 301A68/1012Z 300"

The second page of the cable was even less informative. It was completely blank, except for a "Top Secret" Stamp.

¹⁵The subpoenas were directed to the National Security Agency, the Defense Intelligence Agency, the Director of Central Intelligence, and the National Security Council.

¹⁶The subpoena to the Defense Intelligence Agency on the subject of the Mid-East war illustrates the types of documents called for:

"1. For the period of September 25, 1973, through October 6, 1973, on a daily basis, or as frequently as same were issued, the original documents as follows: all Defense Intelligence Agency estimates. Current Defense Intelligence Summaries, situation Reports, and any and all cables emanating from the Defense Attache Office in Tel Aviv, National Military Intelligence Center daily briefings. . . ."

¹⁷A staff summary, prepared on September 12, 1975, indicated the following non-compliance: "DIA Items Not Furnished—Cyprus and Mid-East War

a. DIA Intelligence Summaries for July 14, and July 20.
b. DIA Daily Current Intelligence Briefings for July 13, July 14, and July 20.
c. DIA Daily Intelligence Bulletins for September 29, September 30, October 6.
d. DIA Intelligence Summary for September 30.
e. SIGSUM's for July 13, July 14, July 19, July 20, July 15, July 16, July 17."

¹⁸The September 12, 1975, compliance summary for NSC reads as follows:

ever, in an apparent need not to appear arbitrary in their earlier decision, they insisted that some 15 words still remain classified.

The Committee debated those 15 words for over four hours in a closed session. The CIA Special Counsel was present and in telephone contact with CIA Director Colby; the head of the State Department's Intelligence and Research was there; the head of the Defense Intelligence Agency was there; and a high official of the National Security Agency was there. No agency was without representation, and all had a chance to speak. Nine words were instructed to remain classified, but four words were not.

The four remaining words would not reveal any secret sources and methods, which is the basis of official classifications,¹⁹ because the information they contained could have come from any number of sources. In addition, the intelligence was so old by the time it was reported that it could not reveal how rapidly our intelligence techniques operated.²⁰ The Committee satisfied itself on these and other points before taking some half dozen rollcall votes on the matter.

It is possible that never before had so much expertise and thought gone into a declassification decision. For this, the Committee was accused of being irresponsible.²¹ To protect national security, the "President" invoked a cut-off, perhaps before the President ever heard of what was going on.

The Committee later learned that in a biography of Dr. Kissinger a year earlier the subject to which the four words referred had been spelled out in great detail. So much for the validity of the classification argument. No "high State Department official" had been cut off from information or forced to turn over his files as a result of that earlier publication. So much for protecting against irresponsibility.

Police guarding Committee offices were instructed to prevent any takeover of files by the Executive, and nothing more was heard of that.

Nevertheless, the cut-off from information struck at the heart of Committee operations. One month out of our five-month investigative period was lost while the issue was negotiated. With little choice, the Committee agreed that for purposes of getting the investigation under way again, future disputes would be referred to the President.²⁴ This was agreed to on the assurance of the President that the Committee would have no further problem with access to information.²⁵ It is perhaps significant that the day the Committee

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was cut off, was also the day hearings were scheduled on the 1974 Cyprus coup. Hearings were to be focused on the State Department's handling of intelligence, and of Dr. Kissinger's role therein.³⁶ Those hearings had to be cancelled. However, the Committee located a State Department witness who was to testify about Cyprus, even in the absence of classified evidence from the Executive—his name was Thomas Boyatt.

Thomas Boyatt was the State Department officer in charge of the Cyprus desk during the period in question. The Committee was interested in what kind of intelligence had been supplied to Boyatt regarding the 1974 coup against Archbishop Makarios and the consequent Turkish invasion.

More important, the Committee wanted to examine how the intelligence, as well as Mr. Boyatt's analysis of it, was handled by the decisionmakers at State. Mr. Boyatt had, in fact, advised one of our staff members that he vigorously criticized the handling of intelligence at the time of the Cyprus crisis. This criticism was quoted in a written report which was sent through the State Department's "dissent channels" (Page 25 of the Draft Final Report not available—editor's note.)

Footnotes:

³⁶Rex E. Lee, Assistant Attorney General, Civil Division, delivered the order:

"... The President's responsibilities for the national security and foreign relations of the United States leave him no alternative but to request the immediate return of all classified materials heretofore provided by any department or agency of the executive Branch and direct the departments to decline to provide the Select Committee with classified materials, including testimony and interviews which disclose such materials, until the Committee satisfactorily alters its position."

³⁷When Mr. Rex Lee appeared before the Committee to announce the President's cut-off of information, it became evident that the executive branch had not given the matter equally careful consideration.

³⁸Chairman PIKE: Mr. Lee, you say it reveals certain foreign communications activities of the United States. Is that your language?

³⁹Mr. Lee: That is what I am advised, Mr. Chairman.
⁴⁰Chairman PIKE: Did you look at the language of what the Committee released?

"We continue to believe that an outbreak of major Arab-Israeli hostilities remains unlikely for the immediate future although the risk of localized fighting has increased slightly. . . . 4 October 1973 (emphasis in original)."

There are reports that Syria is preparing for an attack on Israel but conclusive evidence is lacking. In our view, the political climate in the Arab states argues against a major Syrian military move against Israel at this time. The possibility of a more limited Syrian strike—perhaps one designed to retaliate for the bombing of the Syrian Air Force took from the Israelis on September 13—cannot, of course, be excluded." NLR Memorandum to the Secretary, 30 September 1973 (emphasis in original).

³⁶The first of five quotes, which was later released, is as follows:

"Syria-Egypt—The movement of Syrian troops and Egyptian military readiness are considered to be coincidental and not designed to lead to major hostilities." DIA Intelligence Summary, 3 October 1973.

The text was the subject of an extensive discussion among the Chairman and representatives of the CIA: "Chairman PIKE: Mr. Parmenter, before we go into questioning, would you tell me why you have omitted from your sanitized statement here the actual predictions, as contained in the report from which you read, i. e., the DIA Intelligence Summary Statement of 3 October 1973? I want you to look at what the original report says and tell me why we should not, here in open session, hear what the DIA actually said on October 3, 1973."

"Mr. PARMENTER: There are sources and methods here that we will be happy to discuss in executive session."

"Chairman PIKE: Sources and methods in that statement?"

"Mr. PARMENTER: Yes, sir."

"Chairman PIKE: I find that incredible. How does that differ from the one you read on the preceding page (NLR Memorandum to the Secretary) as far as sources and methods are concerned? . . . All I am asking you is, could you tell us why the reading of this plain, blank conclusion by the DIA as to the likelihood of the outbreak of war, would reveal a source or a method?"

Mr. ROGOVIN: I will assume that the reason for the deletion was the manner in which the information was secured.

"Mr. LEE: The same way, Mr. Chairman, that for decades other committees in Congress. . . ."

"Chairman PIKE: That is exactly what is wrong, Mr. Lee. For decades other committees of Congress have not done their job, and you have loved it in the executive branch. You tell us that Congress has been advised of this. What does that mean? It means the executive branch comes up and whispers in one friendly Congressman's ear or another friendly Congressman's ear, and that is exactly what you want to continue, and that is exactly what I think has led us into the mess we are in."

³⁴Text of letter from Mr. William Colby, Director of Central Intelligence, to the Chairman, dated September 30, 1975:

"With the approval of the President, I am forwarding herewith the classified material, additional to the unclassified material forwarded with my letter of 29 September 1975, which is responsive to your subpoena of September 12, 1975. This is forwarded on loan with the understanding that there will be no public disclosure of this classified material (nor of testimony, depositions or interviews concerning it) without a reasonable opportunity for us to consult with respect to it. In the event of disagreement, the matter will be referred to the President. If the President then certifies in writing that the disclosure of the material would be detrimental to the national security of the United States, the matter will not be disclosed by the Committee, except that the Committee would reserve the right to submit the matter to judicial determination."

³⁵On September 26, 1975, Mr. McClory described the President's position as follows:

"We have assurance, in my opinion, of getting everything we need, and I would hope we would find we were getting everything we need."

³⁶Mr. William Hyland, Director of Intelligence and Research, Department of State, was scheduled to be the key witness on September 11, 1975. It was unfortunate that the cut-off and later restrictions on testimony from Foreign Service officers, prevented the Committee from a full investigation of the Cyprus crisis. There is a closely held State Department report identifying the people to whom the American Ambassador Roger Davies, during the crisis, and a public protest has perhaps not been raised because these same murderers are now officials in the Cyprus government. Questions related to that intelligence report should, and must, be cleared up.

"The 'Dissent Channel,' through which this material

"Mr. LEE. I did not.
"Chairman PIKE. You are sitting here making a statement, saying that we have released language relating to the communications activities of the U.S. Government, and you did not even look at the language we released."
21 In his appearance before the Committee, the Assistant Attorney General asserted that the disposition of security information is solely within the prerogative of the executive branch:
"Chairman PIKE. You say the legislative branch of Government had no right whatsoever to make anything public that the executive branch of Government does not want public. Is that your position?"
"Mr. LEE. That is our position as far as classified information is concerned."
"Chairman PIKE. So what you say is that in this great democracy, one branch of Government, and one branch . . . alone may decide what is secret, and one branch of Government . . . alone may decide what is not secret."
In support of his position, Mr. Lee did not assert that the Congress or the Committee was bound, as a matter of law, by Executive Order 11652, which established the current classification system, nor did he offer any contrary interpretation of Section 6(a) of H. Res. 591, which explicitly authorized the Committee to release such information as it deemed advisable.
This quotation is taken from the summary conclusion of a post-mortem prepared by the intelligence community itself. The principle conclusions of the post-mortem began as follows:
"1. There was an intelligence failure in the weeks preceding the outbreak of war in the Middle East on October 6. Those elements of the intelligence community responsible for the production of finished intelligence did not perceive the growing possibility of an Arab attack and thus did not warn of its imminence."
"The information provided by those parts of the community responsible for intelligence collection was sufficient to prompt such a warning." The Performance of the Intelligence Community Before the Arab-Israeli War of October 1973: A Preliminary Post-Mortem Report, Director of Central Intelligence (December 1973).
22 The two verbatim quotes which were voluntarily declassified by the CIA were:

"Chairman PIKE. It doesn't say how the information is secured. This is a conclusion."
"Chairman PIKE. Mr. Rogovin, I find as I look at what has been deleted and what has been omitted and what has been retained and read, differs not as to sources and methods, not as to the necessity of protecting the sensitivity of staff, but whether it is in fact further self-serving. . . . Sept. 11, 1973.
23 All five quotes are reprinted in the Mid-East War Post-Mortem in an appendix to this report. The first two quotes are typical:
"Syria-Egypt—The movement of Syrian troops and Egyptian military readiness are considered to be confidential and not designed to lead to major hostilities." DIA Intelligence Summary, 3 October 1973.
"Egypt—The exercise and alert activities in Egypt may be on a somewhat larger scale and more realistic than previous exercises, but they do not appear to be preparing for a military offensive against Israel. Central Intelligence Bulletin, 5 October 1973." Post-Mortem, DCL 6 (December 1973).
24 Of the nine words which the Committee agreed not to release, few of them would have revealed, directly, any sensitive intelligence sources or methods. Instead, in most cases, they constituted personal characterizations, the publication of which might have been embarrassing to the United States or to individual foreign officials.
25 Sec. 7 of the interests of the security of the United States and intelligence activities of the United States and in order further to implement the proviso of section 102(a) of the National Security Act of 1947 (Public Law 253, Eightieth Congress, first session) the Director of Central Intelligence shall be responsible for providing intelligence sources and methods from unclassified disclosure. . . . 50 U.S.C. § 403 (1973).
26 In the closed session, Mr. Rogovin, Special Counsel to the CIA, stated: ". . . [T]he experts feel very confident this is the bottom line that can be made public. These are references to real time reporting."
"Comm. Exec. Sess., Sept. 11, 1973. . . .
27 Mr. Lee referred to what he characterized as the traditional procedures by which the Congress has received and treated classified information, a characterization which elicited the following colloquy:
"Chairman PIKE. If it is your position that we may never disclose information, how can we carry out our responsibilities?"

randum was submitted, provides those officers of the Department of State who disagree with established policy, or who have no policies to recommend, a means for communicating their views to the highest levels of the Department." Letter to Chairman Pike from Dr. Kissinger, Dept. of State, Oct. 14, 1973.
3. Silenced Witnesses
In response, a new tactic was fashioned—the silenced witness.
On September 22, 1973, Mr. Boyatt was asked not to tell the Committee "information which would disclose options considered by or recommended to more senior officers in the Department." The order was added on to the existing ban on classified information.
That was not the end. Anything Mr. Boyatt did say would have to be in the presence of State Department monitors by order of the Secretary.
It is worth pointing out that this prohibition extended to more than Mr. Boyatt's options or advice. Any information that would disclose those options was also banned. An attempted interview by the staff, with monitors, demonstrated that this covered almost everything the man ever did or said.
The State Department's order was issued in spite of two United States laws which protect and guarantee the right of a federal employee to provide information to Congress.
One statute says that the right of a federal employee "to furnish information to either House of Congress, or to a Committee or Member thereof, may not be interfered with or denied."
41 The second law, which directly bears on the Boyatt situation, was specifically designed to encourage candid testimony of employees from federal agencies, including the Department of State.
42
The authority invoked by the Secretary of State was neither "classification," nor "executive privilege," but a new doctrine that can best be characterized as "secretarial privilege."
43
The Secretary of State was demanding special treatment. If this Committee could not have received testimony from CIA officers or FBI agents about advice or options they presented to senior officials, it would have had no choice but to shut down.
44 Over-sight would be dead.

Fortunately, the CIA, the FBI, and the other intelligence agencies had either not heard of "secretarial privilege," or did not believe it existed.

On October 2, 1975, the Committee voted to issue a subpoena for Mr. Boyatt's Cyprus critique. Dr. Rosenberg responded on October 14, 1975, referring to the subpoena as a "request." It was denied even though it was not a request, but a legal order to produce a document.⁴⁶

Time and control are, as we noted at the outset, in the hands of those who have possession of documents. The more, the Committee, more than one month after issuing its subpoena, accepted from Mr. Boyatt no testimony and no document, but something less. We were given Mr. Boyatt's memo, after it had been mixed into a number of other paragraphs, drafted elsewhere in the State Department—ostensibly to protect Mr. Boyatt. It ended up very much like the proverbial "riddle wrapped in a mystery inside an enigma."⁴⁷

This time the euphemism was "an amalgam."⁴⁸

Footnotes:

⁴⁶This order was embodied in a September 27, 1975, memorandum from Lawrence S. Eagleburger, Deputy Undersecretary of State for Management, to William G. Hyland, the Department's Director of Intelligence and Research. This directive stated that "the following conditions will pertain to sworn interviews by the Pike Committee staff:

"The Department of State insists that a State Department representative be present during the interviews. Should the interviewees wish to be represented by their own legal counsel, the State Department representative will be in addition to that private legal counsel.

"The interviewees are to decline, by order of the President, to discuss classified material.

"The interviewees are to decline, by order of the Secretary of State, to give information which would disclose options considered by or recommended to more senior officers in the Department of State."

When Mr. Eagleburger appeared before the Committee on September 25, he stated that the orders contained in his memorandum of September 22 were issued at the verbal direction of the Secretary of State.

⁴⁷This was clearly indicated by the following exchange among Mr. Field, on behalf of the Committee, Mr. Boyatt, and Mr. Hitchcock, the Department's monitor:

Executive privilege, nor am I asserting a secretarial privilege."

⁴⁴One example comes from reports on the Cyprus crisis: "On the basis of a single CIA report from Athens, the analysts, notwithstanding their earlier concern, conveyed the impression to the policymakers that the world had been granted a reprieve." CIA Post Mortem on Cyprus, p. 111 (January 1975).

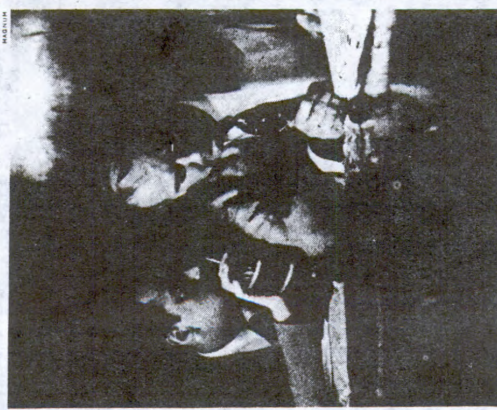
Not only were we told about the report, we were also told about its impact on policymakers.

⁴⁶The Committee Counsel, on Nov. 6, 1975, noted that, "MR. DONNER . . . A subpoena is not an invitation to negotiate. A subpoena is a command by a duly authorized body of government to deliver information."

⁴⁷Winston S. Churchill, radio broadcast.

⁴⁸On November 4, the Committee, by a vote of 8 to 5, agreed to the following resolution:

"Resolved by the Select Committee on Intelligence



Innuendo of McCarthyism: The late Wisconsin Senator at a hearing with helpmeet Roy Cohn.

the Committee for pursuing the plain truth. With that opinion, the fiction of an amalgam became feasible. Some day the full story of Cyprus may be told, but not by this Committee.

a. An Attack Averted

If no "flank" attack was launched by the FBI to discredit the Committee, it may have been because one was averted by the Committee.

On October 9, 1975, Mr. Martin Kaiser, a manufacturer of wiretap equipment, testified before the Committee. He indicated that the FBI bought his equipment through a middleman, U.S. Recording, who added a 10 percent markup. There was no justification for the markup, and it later developed that the president of U.S. Recording and a top FBI official were close friends.

The Committee began an investigation of U.S. Recording and its FBI friends. The Justice Department and FBI later began their own probe of the same matter.

On December 23, 1975, two and one-half months after Mr. Kaiser testified, he was subjected to a six-hour interview by two FBI agents. The agents were allegedly carrying out an internal FBI investigation regarding the agency's contractual dealings with U.S. Recording Company.

Mr. Kaiser called the Committee to relay his concern, and offered to give a statement under oath as to the conduct of the FBI agents.

In a Committee deposition of December 30, 1975, Kaiser claimed that the FBI agents were more concerned with discrediting the Committee's inquiry and personnel than conducting their investigation of U.S. Recording. Ultimately, the agents had elicited from him a statement written by an FBI agent, which in some insignificant details repeated portions of his testimony. Mr. Kaiser then repudiated that written statement, which he had signed while agents stood over him and thrust it in front of him.

Taking the initiative, the Committee, on December 31, 1975, released a copy of the written statement, a full copy of Mr. Kaiser's December 30, 1975, deposition, and the text of a letter to the Attorney General demanding a full explanation of the entire incident.⁴⁹ This was done to head off any FBI "leak" of the statement its agents had taken while Kaiser was under some duress.

"MR. FIELD. Mr. Boyatt, would you please describe for us in detail what was done in the State Department not with respect to classified intelligence reports or information, but . . . knowledge of any of these events, who was involved and what they were doing? Would you please describe that for us in some detail?"

"MR. BOYATT. I would like to ask Mr. Hitchcock's advice."

"MR. HITCHCOCK. I regret but it appears to me that this comes to the problem of the description of the decision-making process which my instructions seem to indicate is prescribed."

"MR. FIELD. In other words, it is your position that who was doing what in the State Department has something to do with decision-making?"

"MR. HITCHCOCK. Yes."

"MR. FIELD. We can't discuss this activity? We can't discuss where he went to, what he did, who he told, what that person told him in response? We can't discuss as I understand it, whether or not he is aware of any moves made by the Secretary of State towards Turkey, towards Cyprus, either preceding or during this period?"

"The right of employees, individually or collectively to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied." 5 U.S.C. § 7102 (1973).

"Upon the request of a committee of either House of Congress, a joint committee of Congress, or a member of such committee, any officer or employee of the Department of State, the United States Information Agency, the Agency for International Development, the United States Arms Control and Disarmament Agency, or any other department, agency, or independent establishment of the United States Government primarily concerned with matters relating to foreign countries or multilateral organizations, may express his views and opinions, and make recommendations he considers appropriate, if the request of the committee or member of the committee relates to a subject which is within the jurisdiction of that committee." 2 U.S.C. § 1949 (1973).

Chairman Pike, questioning Dr. Kissinger in an open hearing on Oct. 31, 1975, stated: "I feel that you are alleging a privilege which has heretofore been reserved only to Presidents." Dr. Kissinger responded: "I have deliberately not asked the President to exercise

of the House of Representatives that an amalgamation of Department of State documents to include in its entirety the papers described as the Dissent Memorandum prepared by Thomas Boyatt while Director of Cyprus Affairs in the Department, fulfills the requirement of the subpoena issued by the Committee on the 2nd day of October, 1975.

"Provided, the amalgamation is accompanied by an affidavit signed by a person mutually acceptable to the Department of State and the Committee as represented by the Chairman and the ranking minority member, attesting that the aforementioned Boyatt memorandum is contained unabridged in the amalgamation."

"The adoption of this resolution shall in no way be considered as a precedent affecting the right of this Committee with respect to access to Executive Branch testimony or documents."

4. Flank Attack

On September 24, 1975, two days after written instructions to Mr. Boyatt were issued, the Deputy Secretary of State raised for the first time an innuendo that the Committee's action resembled McCarthyism.⁴³ The Committee's initial reaction was to dismiss any such inference as a temporary lapse into poor taste.

Unfortunately, it was not a temporary lapse.

The next day, on September 25, 1975, Deputy Secretary Eagleburger appeared before the Committee to explain the Boyatt order. His statement again referred to State Department employees' problems with Congress in past times—a clear reference to the McCarthy period of the 1950's as his subsequent testimony made clear.⁴⁴ On October 14, 1975, Dr. Kissinger's written response to the subpoena of Boyatt's intelligence critique again raised a reference to McCarthyism.⁴⁵

The implication was baseless⁴⁶ as both Mr. Eagleburger and Dr. Kissinger admitted under questioning.⁴⁷ Facts seemed to make no difference. Within days of the innuendo being raised by Dr. Kissinger and his reply, newspaper columns and editorials were forcing their charges of McCarthyism.⁴⁸

To the extent that such media activity may have been inspired, directly or indirectly, by the State Department, it helped erode support within and outside

Footnotes:

⁴⁹Mr. Eagleburger's statement delivered to the Committee offices on September 24, 1975, read: "Mr. Chairman, this is far from a hypothetical issue. To cite but a single example, the Foreign Service and the Department of State were torn apart in the late 1940's and early 1950's over an issue that raised some of the same concepts that are before us today—the ability of Foreign Service Officers to give to the Secretary and the other superiors their candid advice, secure in the knowledge that this advice will remain confidential. The tenets of those years not only injured individuals, but also did significant damage to the process by which foreign policy is made. Who can be certain how many recommendations during the years that followed were colored by memories of those experiences?"

⁵⁰I must say again, as I said in the statement today, the issue for me right now is an issue of principle. It is the question of our duty to protect junior- and middle-grade officers of the Department in the conduct of their duties within the Department."

⁵¹While I know that the Select Committee has no intention of embarrassing or exploiting junior and middle-grade officers of the Department, there have been other times and other committees—and there may be again—where positions taken by Foreign Service Officers were exposed to unjust factio public examination and recrimination." Letter to Chairman Pike from Dr. Kissinger, Oct. 14, 1975.

⁵²The plain facts are that Senator McCarthy destroyed the careers of State Department employees on the basis of their beliefs and politics. This Committee never sought the political views of any federal employee. Senator McCarthy operated without evidence. This Committee sought only evidence. Senator McCarthy forced people to testify. Mr. Boyatt wanted to testify. McCarthyism grew out of a lack of character and integrity, and from a climate of hysteria. Restrictive rules are no answer to such problems.

⁵³MR. HAYES. One of the things that Mr. deeply attended me . . . has been the implication, these very clear implication, that your position of protecting middle and lower level Foreign Service officers is a position of protecting them from McCarthyism . . . "SECRETARY KISSINGER. With respect to the charge of McCarthyism, I want to make clear that I do not accuse this committee of engaging in McCarthyism, and I know indeed that the Chairman has

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Record in this regard, and from the convictions of many of the members that I am familiar with, I know that this is not the intention of this committee."
"MR. HAYES . . . I don't think there has been one instance that you can cite or that Mr. Leigh can cite, where this Committee has ever taken it upon itself in the tradition of the McCarthy's . . . to, in essence, run a purge operation."
"MR. EAGLEBUNGER. Mr. Hayes, there is no implication in my statement that this Committee is performing in the way I described the Department went through in the late '40's and early '50's. That is not, sir, my point." Sept. 25, 1975.
"The New York Times editorial of October 19, 1975, was entitled, 'Neo-McCarthyism?'"
"In view of the facts, the Intelligence Committee's insistence that it has the right to reach into the interior of the State Department to subpoena the dissembling memoranda of junior and middle-rank officials—and to summon them to testify on policy issues—is clearly contrary to the national interest."
The Washington Post editorial of October 6, 1975, entitled "Mr. Pike's Committee" had this to say:
"The analogy with McCarthyism evoked by the State Department is a relevant one, even though it appears that in this case the committee of Congress wishing to question Mr. Boyatt apparently is inclined to praise him for his views, not persecute him—and to use his testimony to fault Secretary Kissinger. Certainly Mr. Kissinger should be faulted for his Cyprus policy. . . ."

"One of the most disturbing aspects of the incident—quite aside from the propriety of interrogating a Committee witness about the Committee—was that the interview was replete with FBI suggestions of prejudice on the part of the Committee Counsel. Vigor was apparently seen as prejudice, and by two agents who had never met the Committee personnel they were denigrating."

5. Deletions

In early November, about the same time the Boyatt problems were being resolved, the Committee moved on from the subjects of money and what our money buys. The third topic of our hearings was risks, and how well those risks are controlled.

a memo by Dr. Kissinger informing them, for the first time, of President Nixon's decision.

In a separate matter, this Committee was told by former CIA Director Richard Helms of a decision to undertake a covert action project in Chile. Mr. Helms had been called into the Oval office and told by President Nixon, with Dr. Kissinger and Mr. John Mitchell present, that he was to undertake the project in spite of CIA reservations. He was also told "not to inform the other members of the Forty Committee."⁴

A pattern was emerging.
Not all covert actions were generated by the CIA. In particular, paramilitary operations of the worst type seemed to come from outside the CIA. Some projects came from the President. Some projects came from his Assistant for National Security Affairs, and some had their beginning in the Department of State.

Many Committee records were subpoenaed and



Secretary Kissinger: He was "alleging a privilege heretofore reserved only to presidents."

Footnotes:

- ¹ The following subpoenas were honored:
- 1) To the Assistant to the President for National Security Affairs, for all minutes of the National Security Council Intelligence Committee, its Working Group, and its Economic Intelligence Subcommittee;
 - 2) To the Assistant to the President for National Security Affairs, for the minutes of all meetings of the Washington Special Action Group concerning the Mideast War, the Cyprus crisis, and the Portugal coup;
 - 3) To the Assistant to the President for National Security Affairs, for all intelligence reports furnished to the National Security Council between October 5 and October 28, 1973, relating to the Mideast war;
 - 4) To the Director of Central Intelligence, for all written requests and memoranda of requests from the CIA to the Internal Revenue Service since July 1, 1961, for tax information or official action by IRS.
- ² These subpoenas were not complied with:
- 1) To the Assistant to the President for National Security Affairs for all copy Committee records of decisions taken since January 20, 1965, reflecting approval of covert action projects;
 - 2) To the Assistant to the President for National Security Affairs for documents relating to the Soviet Union's adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1974; and
 - 3) To the Secretary of State for all State Department documents recommending covert actions to the National Security Council since January 20, 1961.
- ³ The National Security Act of 1947 states:
- "(d) Powers and Duties.
"For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—
"(1) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." 50 U.S.S. 403(d) (1973).
- ⁴ MR. FIELD: In the case of the Chile operation, could you describe very briefly how that was directed?
"MR. HELMS. Well, there was a part—
"MR. FIELD. How you came to be told—

Seven new subpoenas were issued. Four were for materials relating to subjects of prior hearings. They were honored. The remaining three were directed to Dr. Kissinger for materials pertaining to upcoming hearings. Not surprisingly, these subpoenas were unanswered.⁵⁸

Once again, some background is helpful.

Two of the three subpoenas were for covert action recommendations made by non-CIA officials, since the CIA had already opened up the covert action files to us. The third subpoena was for intelligence records on Soviet compliance with strategic arms limitation agreement (SALT).

When considering risks, covert actions rank as perhaps the highest risk operations in the government, short of war. The law allows CIA "to perform such other functions and duties related to intelligence affecting the National Security as the National Security Council may from time to time direct."⁵⁹ This is the legal authority for covert action. A subcommittee of the National Security Council, presently called the Party Committee, has been assigned the task of directing these actions.

By tracing money, the Committee came across millions of rounds of ammunition and weapons being purchased in the early 1970's. The purchases were destined for a questionable military venture in a far-off war that most Americans had probably never heard of, much less felt they had any national interest in.

The CIA's military escapade was bad enough, but, on examining documents the Committee discovered that the Forty Committee appeared not to have met or voted on the operation in fact, internal documents showed that CIA and the State Department had turned the project down three times in the previous two years.

I turned out that during a trip overseas, President Nixon and Dr. Kissinger had met along with the head of a foreign government (the Span of Iran—editor's note). At that man's request, the Administration had involved CIA in an internal war in the head of state's neighboring country (the Kurdish rebellion in Iraq—editor's note). John Connally, on the verge of heading Democrats for Nixon, was sent back to the foreign leader, apparently to bring him the good news of final approval.

A month later, after training for the project had already begun, Forty Committee members were sent

if the pattern was valid.⁶⁶ The subpoena was limited to the official documents which a covert action was approved. These records were then no more than one paragraph long.

What arrived in response to our subpoenas showed nothing—because it was mostly deletions.

The deletions came in all shapes and forms. Typically, there would be one line left on a page, saying, "A CIA project was telephonically approved."

or, "The Committee voted to approve a CIA paper entitled [title deleted]." Often, if there had been numerous items considered at a meeting, the deletions themselves had been cut and pasted together. For example, item eight might follow item one, giving the impression that only two items had been considered that day.⁶⁷ Sometimes there would be only one word left on a page—"Chile"—nothing else, anywhere; but it was still classified top secret. The information, needless to say, was worthless.⁶⁸

Wholesale deletions were encountered in the Committee's investigation of domestic covert activities as well.

COINTELPRO, the FBI's program for disruption of the "New Left," like nearly all FBI actions, was extremely well documented. The Committee requested the appropriate documents in July.⁶⁹ What it received were summaries so heavily excised as to be unusable.

One memorandum, for example, referring only generically to the "New Left," contained the subheading, "Recommended Procedure," on one page, and "Results" on the next. The pages were otherwise blank. Another document with the same type generic reference, "Black Extremist Organization," was likewise excised in its entirety.

The Committee protested. Negotiations followed. Finally, in mid-October, an agreement was reached whereby less excised memos were made available to Committee staff at FBI headquarters. The Committee persisted, selecting a representative number of memoranda to be delivered to its own offices. After some delay, they were delivered, still excised.

Requests for the documents pertaining to FBI national security wiretaps led to a similar experience. One set of documents was delivered, excised beyond use. Negotiations took place for almost a month. Finally, a second set of documents was provided. But, again, without identifying targets of electronic surveillance.

"MR. HELMS. There was some activity undertaken at the President's direction in Chile by his saying to me that he wanted this effort made and that I was not to inform the other members of the Forty Committee."

"MR. FIELD. In other words, in the case of the Chilean operation, were you called to the Oval Office?"

"Mr. HELMS. I was in the Oval Office."

"Mr. HELMS. You were called into the Oval Office and who was present?"

"MR. HELMS. The Attorney General and Dr. Kissinger." Exec. Sess., Oct. 23, 1975.

CHARMAN PIKE: The question then becomes, and Mr. Field stated this yesterday—are those operations which are generally within the CIA, and in the normal course of business, normally more responsible? Do they normally get our nation into less difficulties than those which somebody outside of the intelligence operation department tells them to do?"

CHARMAN PIKE: Well, here we are seeking to look at the genesis of all oversight and the degree of control and the degree of responsibility by which these operations get launched.

"You and I, and Mr. Dellums, and Mr. Treen, as members of the Armed Services Committee, for years heard the magic word, 'The Forty Committee.' It has seemed to us as we get deeper and deeper into this that the Forty Committee really has not been all that relevant in the decision-making process in the oversight process. The Forty Committee is always held forth as being that body which exercises judicial restraint, perhaps, in authorizing these various operations. It has seemed to me and I think most of the members of this committee that the activities of the Forty Committee have been relatively negligible in authorizing these operations."

"We are trying to get the information to see whether anybody ever really argues about these things, to see whether anybody votes no on these things, to see whether the Forty Committee is a reality or a rubber stamp."

MR. FIELD: I think this is the best example of the kind of deletions. The items skip from item 1 to item 4, items 2 and 3 are clearly cut and pasted out of the document. It then skips from 4 to 7. In other words, here is a document that could conceivably be two or three or four pages long. It gives you the feeling that you have gotten a reasonable amount of information, but in fact all somebody has done is skip but little sections and paste them together and cut

40 documents sent to the NSC from CIA that should have been included in the subpoenaed material. The lack of access to documents was the primary reason no administration witness was called to testify at the Committee's first SALT hearing. Without documents to identify issues, we called a SALT critic, Admiral Elmo Zumwalt, to testify.

Ironically, the same officials who withheld primary source materials from us criticized the Committee for not presenting administration witnesses. However, we had no evidence to question them about.

After documents were sent to the Committee, a hearing was held to receive testimony from two senior administration officials with reference to certain documents that appeared to show withholding of intelligence. The point is that until the Executive opened access to documents we could not select appropriate witnesses or be prepared with issues; nevertheless, that same Executive made it seem that responsibility for not calling their witnesses rested with the Committee.

For example, SALT intelligence was put on "hold"—which means it was not only classified, but not even generally distributed in the executive branch. Mr. Hyland testified as to one of these "hold" items: "MR. FIELD. But the Russians were told it twice while it was to hold."

"MR. HYLAND. That is the purpose of the system. If you decide not to do it, that is one decision."

"MR. FIELD. Who was it kept from?"

"MR. HYLAND. As far as I am concerned, officials who had an operational policy decision were informed."

"MR. FIELD. That is not the question. Whom are we keeping it a secret from?"

"MR. HYLAND. We are keeping a hold item secret from people who might read the Central Intelligence Bulletin that is disseminated in several hundred copies."

"MR. FIELD. We tell the Russians."

"MR. HYLAND. Of course."

8. Routine Problems

When legal proceedings were not in the offing, the access experience was frequently one of foot-dragging, stonewalling, and careful deception. A few examples should suffice.

to the contumacious conduct of Henry A. Kissinger as Secretary of State, in failing and refusing to produce certain pertinent materials in compliance with a subpoena duces tecum of said Select Committee served upon Henry A. Kissinger, as Secretary of State; and as ordered by the Select Committee, together with all the facts in connection therewith, under the seal of the House of Representatives to the United States Attorney for the District of Columbia, to the end that Henry A. Kissinger, as Secretary of State, may be proceeded against in the manner and form provided by law.

"MR. FIELD. . . Mr. Hyland . . . had both the State Department recommendation and the Forty Committee minutes before him. He read verbatim from the Forty Committee minutes, and he used the State Department recommendations to verify the date, the country, and the type of program that was recommended by the State Department, and in response to our questions, he was very forthcoming."

7. More Delay

The third so-called Kissinger subpoena was intended for the review of strategic arms limitation agreement (SALT) intelligence handling, but brought instead a return to the delay.

What is SALT, and why was the Committee so interested in the intelligence aspects of it? Briefly, SALT covers the strategic arms limitation agreements signed with the Russians in 1972 to limit the arms race. The agreements specifically limit such things as missile production, deployment, and testing by the United States and the Soviet Union. The ability of our intelligence services to detect whether the Russians are violating this agreement is of vital strategic interest. More important, SALT intelligence must be able to move through channels, uninfluenced by bias or ulterior motives, to appropriate decisionmakers.

The Committee had earlier received testimony that during the Vietnam War, a desire to please highlevel officials may have caused some intelligence to reflect what the upper levels wanted to hear. Vietnam is history, but SALT is not.

To check how intelligence was being handled at the highest levels, and whether it was ever withheld from top Executive officials or Congress, the Committee subpoenaed all reports on Soviet compliance

pact them and make it look like it is a complete document."

"MR. PIKE. I think that as any of us look at what they have given us, we will simply make a pretty easy judgment that what they have given us is so heavily censored and deleted as to be meaningless for our purposes."

991 was part of a general request on July 22, 1975, for all documents previously provided the Senate Select Committee.

The Senate, which received the same excised material, also objected, with more or less the same results. All of this happened before July 22, 1975. Much time could have been saved had that information been volunteered to the House.

6. Privileges

The second Kissinger subpoena brought even less than the first one.

For the first time in the history of the Ford Administration, executive privilege was invoked. The subpoena which caused this historic assertion was directed to Mr. Kissinger as Secretary of State, and intended for the purpose of examining the type of covert actions recommended by the State Department since 1965.

The State Department reported that it had received only eight projects—this was later changed to 16, and still later to 20—but that none of the documents could be provided to the Committee.

Although only a few of the recommendations were from a Secretary of State to a President, all documents were being withheld because they were deemed privileged communications with Presidents. They included recommendations from lesser State officials to the staff of the National Security Council, with no apparent intention that the document be for the eyes or the use of the President.

The communication did not take place in this President's administration. All privileges recognized by law are controlled specifically and personally by the person whose communication is being protected, and this President was not in that position as to all the documents. It must be noted, again, that no other intelligence agency or department withheld recommendations for covert action—or anything else—sent to the National Security Council. If they had,

the Committee's work would have come to a halt. In any event, nothing came forth from the State Department.

At no time was there a legitimate question as to which documents the Committee was seeking, under either this subpoena or the subpoena for Forty Committee documents. At no time was the physical amount of paper a problem, since only a few hundred sheets of paper were at issue. At all times, this Committee, as well as the Congress, had a right—and, in fact, an obligation under law⁷⁵—to review the information at issue.

With no other recourse, the Committee cited Dr. Kissinger for contempt on November 14, 1975.⁷⁶

On November 20, 1975, the Committee approved a report to the House of Representatives, asking that the Committee's contempt citation be supported by the House itself and referred to the U.S. Attorney for prosecution. Contempt proceedings began to produce results with respect to the Forty Committee records. Revised editions, with fewer deletions, were soon provided.

Nothing came forth from the State Department. The Committee then entered its last two weeks of hearings, having endured more than three months of uninterrupted delays, cut-offs, silenced witnesses, amalgams, attacks, deletions, and privileges.

Finally, the evening before the Committee was to take a contempt citation of Dr. Kissinger to the floor of the House for a vote, the Committee was given access to State Department recommendations for co-action.⁷⁷

Footnotes:

⁷⁵WILLIAM JOHNSON, "... I don't think we ought to even acknowledge that this is a possibility that a President can control everything that has happened in the government files and government documents; that the President has absolute control over this since the time of the inception of the Republic."
⁷⁶Sec. 2. The select committee is authorized and directed to conduct an inquiry into—

...
"(5) the necessity, nature, and extent of overt and covert intelligence activities by United States intelligence instrumentalities in the United States and abroad;" H. Res. 591, 94th Cong., 1st Sess. (1975).

⁷⁷Resolved, That the Speaker of the House of Representatives certify to the Committee of the Select Committee on Intelligence of the House of Representatives

that had been sent to the National Security Council. At first, Committee staff went to the White House and was given a few SALT monitoring reports. These, it was said, were absolutely all that the National Security Council had in its files on the subject of SALT compliance. That did not seem possible.

For one reason, the Verification Panel, which exists primarily to review SALT matters, is part of the National Security Council and has been quite active. For another, the Committee had already identified dozens of pertinent documents from the intelligence community which had been sent to the National Security Council.⁷⁸

The skepticism proved accurate. After Committee proceedings to cite Dr. Kissinger for contempt of the SALT subpoena, on November 14, 1975, volumes of SALT intelligence materials began to come forth. A week had passed since the return date of the subpoena before the documents we needed were even identified, making preparations for hearings most difficult.⁷⁹ This was the last of the subpoenas, however.

In reviewing the oversight experience, access to information, even when it was backed up by subpoena, was not satisfactory. As an example, at the State Department we found that lower level officials had eventually been ordered not to testify before the Committee; their documents were likewise refused to Congress. Upper level officials at State had become inaccessible because of executive privilege; and diplomatic exchanges, an important element of intelligence, were similarly off limits to the Committee.

To place the importance of this in perspective, intelligence has two primary consumers: military and diplomatic. Diplomacy is preferable to war; yet it is nearly impossible, today, to evaluate how well intelligence serves diplomatic ends. If it does not serve well, it is hard to imagine how anything could be known or done about it by Congress.

The passion for confidentiality and secrecy at State is curious, because in many cases the Russians and other adversaries were either directly informed of the name secrets the Committee sought, or the Russians know of them by other means.⁸⁰ It is hard to imagine a justification for allowing the unelected to keep elected officials in the dark, in a democracy.

Footnotes:

⁷⁸See, for example, the fact that the Verification Panel of the Committee, the Restricted Working Group. In addition, we had identified some

The President went on television June 10, 1975, and reassured the nation that the uncompleted work of the Rockefeller Commission would be carried forward by the two intelligence committees of the Congress. The files of the Commission, President Ford announced, would be turned over to both committees immediately.⁸⁵

The Committee began requesting those files within the week. We requested and requested.⁸⁶ We negotiated.

Finally, by threatening to announce publicly that the President's word had not been kept, the files were turned over—in mid-October, some four months late.

In another case, likewise involving basic research information, the Committee in early August, requested a complete set of what has become known as the "Family Jewels." This 693-page document was the very foundation of the current investigations. It had come into existence as the result of an order by former CIA Director James Schlesinger, on May 9, 1973, in the wake of Watergate revelations. Dr. Schlesinger had ordered CIA employees to report any possible past wrongdoing, and those reports were compiled into the "jewels" on May 21, 1973.⁸⁷

By the end of August, the Committee had been provided only a sanitized version of the document. Letters were sent and negotiations proceeded throughout September. On October 7, 1975, the staff was told that they would not be allowed to see the complete record of wrongdoing as assembled in May 1973.⁸⁸

A second sanitized version was sent in mid-October, but it was hardly less sanitized than the first. As an interesting sidelight, the second version did have one page that was not in the first. It was a photocopy of a Jack Anderson newspaper article, nothing more. In the first version, that page had been blanked out, with the message, "This information deleted because it reveals sensitive operational techniques and methods." The second version was not deleted, but it was classified.

The Chairman demanded a complete copy of the report, and was told that one would be forthcoming. None was. As a result, he scheduled a press conference for 12:00 noon on October 11, 1975.

At 11:45 a.m. on October 11, 1975, the report was finally delivered.⁸⁹ After the life of the Committee's investigation was more than half over.

These two examples represent some of the most basic research materials available to the Committee. Their contents were crimes, abuses, and questionable

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conduct, not sophisticated or legitimate intelligence secrets.

Other important information was withheld, such as a Committee request for certain records of the President's Foreign Intelligence Advisory Board. On August 25, 1975, a letter was sent asking for a copy of the Board's agendas since 1961. No written response to that letter has even been received.

The Board interested the Committee from the standpoint of command and control. There have been numerous recommendations for example, that a pending executive reorganization make this group the key command and control unit for foreign intelligence.⁹¹ The Committee is still waiting for the Board's documents to be delivered, despite the fact that the ranking minority member of the Committee took a personal interest in the matter. A month of his efforts produced only a limited right to see certain information, not the documents themselves.

Another important piece of information the Committee requested was the names and relationships of newsmen who worked for both the CIA and the American news media at the same time. Congressman Dellums asked for this in executive session on August 6, 1975.⁹² The information was re-requested by letter on October 14, 1975, and on October 21, 1975, and on October 31, 1975, and on September 2, 1975.⁹³

The Committee is still waiting for answers about the newsmen. The only information it did receive was in response to inquiries about specific newsmen, after we had determined from other sources that there was a CIA connection. In fact, in one case, the CIA denied the relationship until confronted with irrefutable proof.

As a final example, there is a category of intelligence that is sent to the Secretary of State, who then controls its further dissemination. It is called "NODIS CHEROKEE."⁹⁴

The Committee specifically requested NODIS CHEROKEE information with reference to the Cyprus crisis in 1974. It was told none existed. Two months later other officials revealed that the materials do exist. When the Committee went back to State with this new information, it was simply told NODIS CHEROKEE was not going to be given to us.⁹⁵ By then, there was no time left to issue a subpoena.

Footnotes:

⁹¹"Because the investigation of the political assassination allegations is incomplete . . . I will make available to the Senate and House Select Committees these [Rockefeller Commission] materials together with other related materials in the executive branch. . . I should add, that the Senate and House Committees are also in the process of making further investigations as they have been charged with the responsibility by the Congress; so there's not going to be any possibility of any cover-up because we're giving them the material that the Rockefeller Commission developed in their hearings. . . ." President's News Conference, Washington, D.C., June 10, 1975.

⁹²More than two dozen phone calls were made, by three separate members of the staff, over a three-month period.

⁹³"MR. JOHNSON. On May 9th of '73, Mr. Schlesinger issued a directive calling on all CIA employees to report any and all abuses by the CIA. That is a matter of public records, there isn't any question about that, is there?"

"MR. COLBY. No, sir.

"MR. JOHNSON. And is it also a fact that by May 21, just 11 days later, there were several hundred separate reports of abuses which had been reported to him?"

"MR. COLBY. There were a number of abuses, I couldn't give you a quantitative statement.

"MR. JOHNSON. That is the report that has been called by a variety of names, it has been called potential flap activities, or jewels, or the family jewels; isn't that the report we are talking about?"

"MR. COLBY. Yes."

⁹⁴"On 4 September I formally requested to see the original copy of the unsanitized 'family jewels' from the Review Staff at CIA. I was put off. Then Seymour Bolten, Chief of Review Staff, countered with an offer to have someone sit with Mr. Pike and let him read a version. This was unacceptable, so they further 'compromised' and offered to let Jack Boos and A. Searle Field sit at CIA with the sanitized 'family jewels' and ask for each sanitization as it came up. This was also unacceptable and the access flap started.

"Now, I have been told by Donald Gregg and Seymour Bolten that 'no one will see the original, unsanitized family jewels.'" Memorandum to Mr. A. Searle Field, from Emily Sheketoff, Oct. 7, 1975.

do not lead us into those areas which would help us know what the right question was to ask. You do not make it easy for us to ask the right question. Anyone who thinks you have been running back and forth to Capitol Hill with briefcases bulging with secrets which you are eager to bestow upon us, hasn't sat on the side of the desk."

Congress and the Secrecy Dilemma

Classified information presents a classic paradox: without it, government sometimes cannot function; with it, government sometimes cannot function.

Spy agencies cannot publish details about their operations. At the same time, Congress cannot fail to report to its constituents about abuses of their government. What it all means is that there must be a responsible system of classification, accompanied by an equally responsible and effective system of declassification.

We have neither.

It has been easy to create secrets, but this government has yet to construct an adequate way to handle the problems too many secrets create. We have no

Official Secrets Act which would make it a crime to publish secrets—because such a law would be unconstitutional.¹⁰⁰ Therefore, the only real enforcement of classification is sanctioning those who depend on access to secrets,¹⁰¹ such as Congress. Congress can be, and has been, either cut off from classified information or convinced to receive secrets selectively.

That is only the beginning of classification problems. The law says that there are to be only three categories of classifications: top secret, secret, and confidential.¹⁰² In practice, this, intelligence agencies possess all sorts of "higher" classification, such as "code word" for compartment categories. Just as often, information is simply withheld from Congress under ad hoc arrangements. This Committee was frequently told that, whereas its mandate was legal

a. The Right Question

Perhaps the most difficult problem in developing information about intelligence activities is knowing the right question to ask.⁹⁷

As an illustration, Committee staff obtained the names of CIA proprietaries, after lengthy negotiations. Some time later, staff members noticed that certain names were not on the list. The explanation was that those were "fronts," and we had not asked for fronts.

Nor was this sort of semantic contest confined to staff inquiries in one public hearing. Copies of the transcript and the FBI's Raymond Wamall contained more than one semantic drawing distinctions among "supervisory entry," "boundary," and "illegal back in."

Another example grew out of a Committee investigation of a covert action project that had taken place some years ago. This particular project was the subject of unusual interest by the Committee, both because of the country involved and because it entailed tampering in the free election of an allied nation. The Committee's objections to the project were strong enough that it voted to recommend to the President that the project no longer be kept secret.

Astonishingly, while the Committee was in the midst of objecting to this past project, CIA was obtaining approval for re-instituting the same type of project in the same country. The CIA never told the Committee about this renewal. When newspapers revealed the new project, Committee staff asked the CIA why it had not been told. The response was, "You didn't ask the right question."

Time and again, a question had to be repeated and variously repeated. Only then would the sought-after facts emerge, even though the intent of the questions had been readily apparent. The operable ground rules were, as one official put it, "After all, we're not a Coke machine; you don't just put in a quarter and expect something to come out."

Examples of the difficulty in asking the right question are a bit like trying to prove a negative; the full impact may not be possible to illustrate. It was, however, the most nagging factor in attempting to exhaust the items that deserved Congressional insight. The significance is that it reflects an attitude which cannot be expected to change; and, as long as that is the case, ready access to documentary evidence and primary source material is all the more imperative.

⁹⁷Pike told reporters the documents had been turned over to him, for Committee use, "a few minutes before noon."

"We have been trying to get documents with hard evidence and a particular document including the report generated by Mr. Schlesinger about alleged improprieties within the CIA," [Pike] said.

"Defense Secretary James R. Schlesinger served as CIA director for a few months in 1973 and held an in-house investigation of the agency before he left that post. . . . Pike Gets a New Report," The Washington Star, p. A-10, Oct. 11, 1975.

"From time to time, the Board has examined the scope and effectiveness of covert action and the technical means of gathering intelligence. Staff was informed of current discussions to enhance the responsibilities and resources of the Board. Another concern was the role and interrelationships of members of the Board with the business community. Many of these members are affiliated with major intelligence community contractors."

⁹⁸"MR. DELLUMS: Describe the existence and nature of the CIA secret propaganda operations in the U.S. I would appreciate detail. How many U.S. journalists overseas are in contact with the CIA? How many outlets for media operations does the CIA have in the U.S.?"

⁹⁹This set of requests was for "a complete list of all people now in the news media who have ever had a relationship, contractual or otherwise, with the Agency." Letter to Donald Gregg, Assistant to the Director, CIA, from Emily Sheketoff, Oct. 21, 1975.

⁹⁰"MR. HITCHCOCK, NODIS CHEROKEE is a particularly sensitive category of NODIS messages limited in use to relatively few embassies, covering intelligence materials of extraordinary sensitivity, handled virtually only by the Secretary, the President, if he is involved, and the Chief of Mission. And virtually one-man dissemination in Washington and the field."

⁹¹"All of them (NODIS CHEROKEE) . . . contain diplomatic correspondence between the capitals and Washington. . . . Thus, these messages do not deal with the intelligence matters of concern to the Committee and do not relate to your request of 16 October." Letter to Gregory Rushford from J. I. Hitchcock, Department of State, Jan. 5, 1976.

⁹²"MR. PIKE: It has been my experience and judgment that if you take the time to ask precisely the right question, you will give an honest answer. You

authority to receive classified information, that was not enough.

Footnotes:

⁹³Mr. Colby stated: "I do believe that the question of an Official Secrets Act has to be looked at in the context of our Constitution . . . I would not apply it to the press, for example, because I think that would run into real conflict with the Constitution."

Chairman Pike summarized the witnesses' testimony as follows: "I gather that you are all agreed there should be no Official Secrets Act or the equivalent thereof, and that our Constitution simply doesn't allow it for openers."

In the course of the investigation, one official reminded Committee staff of an anecdote involving President Kennedy and Chairman Khrushchev. During one of their visits, President Kennedy apparently asked the Russian leader about a Soviet citizen who had been sentenced to 23 years for running naked through Red Square shouting, "The Party Leader is a moron." Chairman Khrushchev allegedly replied, "He got one year for indecent exposure, two years for insulting the Chairman, and twenty years for revealing a state secret."

The classification categories and criteria used by the executive branch are defined in Section 1 of Executive Order 11652, as follows:

"SECTION 1. Security Classification Categories. Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute."

1. Oaths and Agreements

The first matter of business between the CIA and the Committee was a request by the Agency that all of the staff be required to sign six pages of CIA oaths.

These elaborate oaths stipulated, in effect, accept-

able conduct for Congressional employees with respect to things CIA had determined were secret. Without oaths, secrets would not be forthcoming. The staff represents, of course, Committee members, but the members were not asked to sign oaths. Perhaps this was because members would not do anything untoward with secrets. More likely, it was because they would protest loudly.

The Committee reminded CIA that subjecting our employees to Executive oaths would violate the concept that Congress is an independent and co-equal branch of government.

It is the Constitutional responsibility of Congress to control its own staff, and this is the course the Committee followed. It required every employee to sign a statement, drafted by the Committee, reflecting the needs and considerations of Congress, and enforced by Congress.¹⁰⁷

This may seem like so much posturing; but it is important not to underestimate the significance of firmly establishing the premise that a target of an investigation does not lay down ground rules. As the Agency noted, this has not been the case in the past; and it may be one of the reasons this investigation had become necessary.¹⁰⁸

The next move was to require the Committee to enter into agreements.

The proposed agreements outlined certain categories of information so sensitive that the Committee was to agree in advance not to see them. When this was rejected, a modified version of those agreements set forth proposed rules and regulations the Committee would abide by if certain classified information were to be made available.¹⁰⁹ These agreements also included a proposal to "compartment" our staff.¹¹⁰ Compartmenting would mean dividing them up and restricting their access to each other's work.

The Committee refused to sign. It refused even to agree, as a matter of "understanding," that Executive rules would be binding. Such proposed understandings included allowing intelligence officials to review the notes of investigators before notes could be brought back to Committee offices. Other committees have consistently been subjected to that arrangement.¹¹¹

The FBI then came forward with a six-page agreement that they requested be signed before classified information could be handled by the Committee.

The FBI proposal was even more restrictive than

¹⁰⁵As the Chairman expressed it to Mr. Rex Lee of the Justice Department: "It means the Executive Branch comes up and whispers in one friendly Congressman's ear or another friendly Congressman's ear, and that is exactly what you want to continue, and that is exactly what I think has led us into the mess we are in."

¹⁰⁹c. The compartmentation procedures of the Intelligence Community have been established pursuant to statute and National Security Council Intelligence Directives. The simplest way for the staff to obtain access to this compartmented material would be to accept the normal secrecy arrangements as modified in the enclosed. This would ensure against difficulties in access to such compartmented material throughout the Intelligence Community." Letter to Chairman Pike, from Mr. Colby, CIA, July 28, 1975.

¹¹⁰The specific suggestion came in a letter to the Chairman: "The security principle of 'compartmentation' involving special access and information dissemination controls is designed to ensure that only

screened materials only if such notes are reviewed and cleared by the Bureau under the provisions of (b) (6) thru (c) above." Procedures, submitted by the Department of Justice, to the House Select Committee on Intelligence, Aug. 19, 1975.

¹¹³"You will recall that the Committee agreed to put all requests for materials, documents, information, and briefings in writing. . . .

"To date the Department has not received written requests which encompass all of the oral requests which were made by the different Committee members during the testimony of Messrs. Pommerening and Walsh before the Committee on August 7, 1975. Letter to Mr. Field, from Mr. Steven Blackhurst, Department of Justice, Aug. 21, 1975.

¹¹⁴"1. Identities of secret agents, sources and persons and organizations involved in operations which, if disclosed, would be subject to personal physical danger, or to extreme harassment, or to economic or other reprisals, as well as material provided confidentially by cooperating foreign intelligence services; diplomatic exchanges or other material the disclosure of which would be embarrassing to foreign governments and damaging to the foreign relations of the United States; and

"2. Specific details of sensitive intelligence methods and techniques of collection. . . .

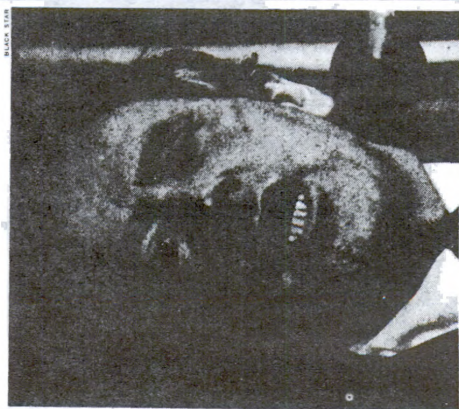
"Verification procedures will continue to be available in case of Committee questions concerning matters deleted by the Executive agency.

"Other matters, the complete confidentiality of which the President personally certifies is essential to the effective discharge of Presidential powers, may be withheld." Draft Agreement, submitted to the Committee, Sept. 28, 1975.

2. Selective Briefings

Soon after the opening hearings, staff began investigating a high-risk, secret program. A request was made to interview the official in charge of the program. The interview was granted, but the official refused to talk about the program. He sat with a thick book of documents, but he refused to let any documents be reviewed. They were too secret.

Intelligence officials made a proposal the Committee would hear again and again. The Chairman and perhaps the ranking minority Member could be



Senator Henry Jackson: He was "extremely helpful" to the CIA in its "problems" with Senate investigators.

CIA's. Secret documents would be made available in special rooms at the FBI, with FBI monitors present. Notes would be reviewed by FBI agents. After notes had been appropriately sanitized, they would be sent to our offices.¹¹²

Once again, the Committee refused to sign. It did agree orally to put all future requests for documents in writing. The repercussions of this oral agreement illustrate quite nicely the problem with agreements. A few days later the Committee received a letter from the Justice Department stating that requests for materials that had been made a month earlier by Committee members in public hearings had not been fulfilled. Even though FBI officials had publicly agreed to furnish the documents promptly, the requests had not been "in writing."¹¹³

While the Committee was negotiating an end to the cutoff from classified information, another agreement for handling secrets was proposed by the Executive. The Committee was asked to agree that certain categories of information be inaccessible.¹¹⁴ Other categories would be available only to senior members by means of selective briefings. Again, it was not agreed to.

Footnotes:

¹¹²The following excerpts are from the agreement signed and honored by the members of the Committee's staff:

"EMPLOYEE AGREEMENT

"1. I have read House resolution 591, 94th Congress, establishing the House Select Committee on Intelligence, and the Committee's Rules and Security Regulations.

"2. I understand that as a condition of employment with the Committee I am required to, and hereby agree to, abide by House Resolution 591, 94th Congress, and by the Committee's Rules and Security Regulations.

"4. I further agree that I will not divulge to any unauthorized person in any way, form, shape or manner the contents of classified information received or obtained pursuant to House Resolution 591, 94th Congress. I understand that it is my responsibility to ascertain whether information so received or obtained is classified. I further understand and agree that the obligations hereby placed on me by this paragraph continue after my employment with the Committee has terminated."

those individuals whose 'need to know' have been specifically approved by some higher authority, who have been specially indoctrinated, and who undertake special commitments to protect it are provided access to a particularly sensitive category of foreign intelligence sources and methods. Compartmentation assists in the application of the 'need-to-know' principle by ensuring that individuals are provided access to only that information clearly essential to the performance of their duties. . . .

"For your information, in addition to the Senate Select Committee's use of the modified secrecy oath dealing with compartmented access, the following House and Senate committees have obtained compartmented access for their staffs, which was granted after the normal briefings and signing of the secrecy oath:

"Armed Services Committee

"Appropriations Committee

"Aeronautical and Space Sciences Committee" Letter to Chairman Pike, from Mr. Colby, CIA, July 28, 1975.

¹¹³The CIA has also informed this Committee that all other Congressional committees leave their personal notes at Agency headquarters.

¹¹⁴(3) The Department will furnish access at the Hoover Building in Room 4171 to those materials requested:

"(a) only to the members of the Committee, where it is determined by the Attorney General that the materials involve peculiarly sensitive foreign intelligence sources of peculiarly sensitive ongoing foreign intelligence operations.

"(c) An exception to (a) and (b) above is made for the identities of so-called "live" informants or potential informants as defined in the FBI Manual of Instructions as to which no access will be furnished unless the identity of the individual as an informant or potential informant has already been made known to the Committee. . . .

"(a) Before the copies of . . . materials are taken to the Committee's offices, the Bureau shall, within 24 hours of the selection, make appropriate excisions and paraphrases of information which might, if inadvertently disclosed, endanger sensitive FBI sources or sensitive ongoing operations.

"The Committee staff may remove notes on un-

briefed on the program.¹¹⁷ In light of the fact that the Committee had been told that clearances would not be used to block the staff's work, it protested. When the Chairman refused to be briefed alone, intelligence officials relented and allowed staff to have access to the information, so long as the Chairman was briefed first.

A second example illustrates the problem with selective briefings. The Committee inquired into a project that included foreign military assistance via the CIA. It was "too sensitive" to discuss with staff. Once again, intelligence officials asked to brief the Chairman and senior Members.

The full Committee and staff were briefed, and the consensus was that the project had turned out to be one of the more outrageous ventures by CIA. Some months later, this same project was the subject of a Committee action to ask the President that the full story be made public.

A recent CIA operation in Africa followed the same awkward course of senior Member and senior staff briefings first, then full and prompt disclosure to the Committee. This Committee consistently maintained this policy that everything told to senior members was promptly told to the full Committee.¹¹⁹ If Congress wanted a one- or two-man Committee, it had every opportunity to set one up. It has not done so to date. Preventing this from happening de facto was, and is, a serious challenge.^{119a}

Footnotes:

¹¹⁷This request was a constant problem, as illustrated by the Chairman's remarks with reference to subpoenaed Forty Committee materials:

"Chairman PIKE. It has been indicated to me that I would be permitted to go down and look at these documents. That is not satisfactory to me. We subpoenaed these documents for the Committee. One of the difficulties which my predecessor had was that he was in possession of information which the rest of the Committee did not have. This Chairman has made it clear from the outset that when we subpoena documents for the Committee and when there is information which the Committee feels it is essential that the Committee have, I am not going to look at the information and deprive the rest of the Committee of it."

"Chairman PIKE. I have two problems with that verification situation."

the village VOICE, February 23, 1976

~~WE have had this situation time and time again in the House of Representatives where the members of a committee and the members of the House are asked to trust the discretion of the Chairman, or of the Chairman and the ranking Member.~~

~~"I have a great deal of trouble with the concept that I should be privy to information which is withheld from the rest of the Committee. That is why intelligence agencies are constantly maneuvering to keep information from Congress."~~

~~MEMORANDUM FOR THE RECORD [deleted] CHIEF, WESTERN HEMISPHERE DIVISION~~

~~RE: MEETING WITH SENATOR JACKSON TO DISCUSS HOW CIA SHOULD HANDLE INQUIRIES FROM SENATOR CHURCH'S SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS, IN REGARD TO CIA INVOLVEMENT WITH ITT IN CHILE, 1976.~~

~~"TOPICS DISCUSSED: Senator Jackson's advice to us was as follows:~~

~~"1. Senator Jackson felt strongly that the first order of business for CIA in terms of handling the basic issues that were involved in the Senate Foreign Relations Subcommittee on Multinational Corporations asking the Agency about its activities in Chile in 1970, was to discuss the problem with the White House (Jackson) was quite explicit that this conversation should be carried out by Schlesinger and that he should talk with no one other than President Nixon and Mr. Henderson (sic). The Senator stressed repeatedly that the Church Subcommittee on Multinational Corporations had focused on ITT only in the sense that this was the top of the iceberg. . . .~~

~~to the problem facing the Agency . . . could be found in getting Senator Mitchell's meeting on behalf of Senator Church. This Committee would then look into the nature and scope of CIA's activities in Chile in 1970. Once that was accomplished, the Oversight Committee would handle the Foreign Relations Committee. Senator Jackson repeatedly made the point that his view of CIA Oversight Committee had the responsibility of problems the Agency in the type of situation that was inherent in the Church Subcommittee. As a result of this conversation, Senator~~

The concept of loaning materials to the Committee had other advantages for the intelligence community. The first advantage is the right to possession and control of final disposition of our files. Without a loan arrangement, staff was told that certain papers could not be provided.

The other advantage in loaning documents pertained to a possible court contest over release of classified information. If release of a document were going to be legally disputed, the Executive clearly wanted to be in the position of having legal possession of that document. Unfortunately, release or publication of Committee information raised far more immediate, and practical, problems.

Footnotes:

¹²⁰Specifically, House Rule XI(2) (e) (2) provides that:

"All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access thereto."

¹²¹The standard caveat, which accompanied all materials turned over to the Committee, was adopted from that of 6 Sept. 26, 1975:

~~As this is loaned on loan with the understanding that there will be no public disclosure of this classified material (nor of testimony, dispositions or interviews concerning it) without reasonable opportunity for prior consultation with respect to it." Letter to Chairman Pike, from Mr. Colby, CIA.~~

4. The Release of Information

One of the most troubling problems the Committee faced was what information to release and what process to follow in making its decision. A corollary problem was what to do about unauthorized release of information.

Existing standards for classifications are vague, arbitrary, and overused. Almost anything can be a "source" or "method" of intelligence—which are the primary criteria for foreign intelligence classifications. As a result, the sources or methods by-line is used to classify items that have practically no bearing at all on intelligence, but was extremely embarrassing.¹²³

lining the significant aspects of each covert operation.¹²⁹ The statements were forwarded to the Special Counsel to the Director of Central Intelligence, with an accompanying letter notifying him of an opportunity to present the Intelligence Community's views in a hearing three days later.

The Director of Central Intelligence, Mr. Colby, appeared, accompanied by appropriate officials, to present any specific objections he might have. His response was specific, but sweeping. He objected to everything, no matter how it was worded, and no matter how impossible it would be to identify a country, a source, or an operational method.¹³¹

Mr. Colby's response seemed to end any good faith effort to work out mutually acceptable release of information, but the Committee made one more effort. The three statements were rewritten, making them even more general than before. Names of countries were taken out; only gross dollar totals were used; and innumerable generic descriptions were inserted. In one case, far less remained than had appeared in newspaper articles attributed to high executive branch officials.

In a hearing the next day, Mr. Colby still objected to the release of anything.¹³²

This meant that all the materials had to be forwarded to the President for a decision on whether release would be detrimental to the national security. The President, of course, turned to CIA for guidance.

More than three weeks later, the Chairman was informed in writing by the President that the Committee could not implement its decision to release the two statements.

Incredibly, the President's letter was classified "secret." The secret stamp was unnecessary, because there were no facts at all about the covert projects in his letter. The types of projects at issue were not even mentioned. The letter was simply a rhetorical pronouncement of how important confidentiality is, and how telling the American people what their government is doing in these matters would harm our best interests.

It should be noted that one of the items that allegedly would harm this nation's security if made public had already been made public—by Dr. Kissinger.¹³⁴

Footnotes:

¹²³A typical example was the CIA refusal, at

...work with the Agency to see that we get this protection ...

"4. Once the Oversight Committee had heard the details provided on the CIA's involvement, the Agency could send a brief statement to the Church Subcommittee staff members in response to the questions which they had previously posed to CIA. Senator Jackson agreed that the following statement would be perfectly adequate for this purpose:

"The testimony of Mr. Helms on 5 and 7 February before the Senate Foreign Relations Committee clearly established that CIA neither gave to nor received from ITT funds for use in Chile in 1970 for support of political parties. In addition, Mr. Helms' testimony brought out the fact that there were no joint action programs established in the context of the 1970 political developments in Chile. CIA regards Mr. Helms' testimony on this topic to be accurate and thus, no further elaboration is planned."

"9. Comment: Senator Jackson was extremely critical of the Agency's problems with the Church Subcommittee. He said that it is essential that the procedure not be established whereby CIA can be called upon to testify before a wide range of Congressional committees."

3. Special Restrictions

Committee Members are not the only object of secrecy arrangements proposed by intelligence officials. Other Members of Congress apparently cannot be trusted with secret information about the government they govern.

Time and again, staff was told that it would be difficult to turn over documents because of Rule 11. Rule 11 is a House rule that allows members of the House of Representatives to have access to all "committee hearings, records, data, charts, and files ..."

The Committee was asked to sign letters affirming that it would not turn over any documents to another Member of the House. The Committee was eventually asked to pass a Resolution to that effect. Sometimes this acted to delay the forwarding of documents. The primary result was that most materials the Committee received in the closing months of its investigations were "on loan."

Overuse of classifications is inevitable when, by the Executive's most recent estimate, some 15,466 persons can classify information.¹²⁴

The Executive Branch claims exclusive and sole jurisdiction over the classification system in a manner that can result in manipulation of news by declassifying information that can be used to justify policy, while maintaining classification of information that may lead to contrary conclusions. Another aspect to be recognized is that classification can hide conduct from the American people that is well-known to the foreign country involved. Castro knew of the assassination attempts. The Cambodians knew they were being bombed, but the American people, whose government was engaging in these practices, were not aware of the activities because of the classification system.

The dilemma arises when a Congressman or Committee receives information which one or the other decides should be brought before the people they represent. This Committee faced that problem and did not reach a satisfactory solution.

The procedure followed by the Committee was that when it decided to consider making public certain information taken directly from classified documents or testimony, it would give appropriate executive branch officials 48 hours' notice. It would then allow those officials to appear before the Committee, in closed session, and present arguments against release of all or part of the information. If they would be forwarded to the President, they would be released unless the President asserted, personally and in writing, that release would be "detrimental to the national security."¹²⁶

The initial Johnson motions were introduced in November 1975, and voted down by the Committee, with five Members not present. Some weeks later, the motions were made again, with all but one Member present, and approved by the majority.¹²⁵ This began the release of information process.

The next step was to draft a short statement out-

first, to declassify part of the 1973 Mid-East War Post-Mortem. That position produced the following exchange with the CIA Special Counsel:

"Chairman PIKE. Mr. Rogovin, I find, as I look at what has been deleted and what has been omitted and what has been retained and read, differs not as to sources or methods, not as to the necessity of protecting the sensitivity of stuff, but whether it is in fact rather self-serving, or whether it is in fact rather damaging."

¹²⁴This estimate was provided to the Committee by the CIA. It was established by President Nixon in Executive Order 11652, which also established the security classification system now in force.

¹²⁵In the event of disagreement, the matter will be referred to the President. If the President then certifies in writing that the disclosure of the material would be detrimental to the national security of the United States, the matter will not be disclosed by the Committee, except that the Committee would reserve its right to submit the matter to judicial determination. Letter to Chairman Pike, from Mr. Colby, CIA Sec. 30, 1975.

¹²⁶The shortest statement was two pages; the longest was 14 pages.

¹²⁷Mr. COLBY. Mr. Chairman, we have several difficulties with this report. We looked through it. We tried to identify what things might be released and what things might not. There are a few odd sentences that might be released."

¹²⁸Mr. NELSON. . . I consulted with the Director. It is his position that he would object to the declassification of either of these papers as I described them to him over the phone."

¹²⁹Tokyo-U.S. assistance prevented a takeover by Soviet-backed elements in Angola in July, a senior official aboard U.S. Secretary of State Henry A. Kissinger's plane said en route to Tokyo yesterday." Washington Post, A-17, Dec. 8, 1975.

This was the first administration acknowledgment of U.S. involvement in Angola.

"Secretary of State Henry A. Kissinger's admission that the United States is trying to be helpful to some neighbors of strife-torn Angola is a surprise only because Kissinger has openly acknowledged it." Jeremiah O'Leary, "U.S. Admits Indirect Aid to Angola," Washington Star, A-4, Dec. 10, 1975. □

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Hearings Conducted .
Pursuant to House Resolution 1042 .
.

AFFIDAVIT OF DEBORAH LEFF

District of Columbia: ss

DEBORAH LEFF, having been first duly sworn according to law, deposes and says:

1. I am presently a third year law student at the University of Chicago law school. I received my B.A. from Princeton University in 1973.

2. From June 14, 1976 until September 8, 1976, I was employed as a summer associate at the law firm of Williams, Connolly & Califano, 839 17th Street, N.W., Washington, D.C..

3. As part of my work, I prepared -- and supervised the printing of -- a "red-lined" copy of the final report of the House Select Committee on Intelligence which appeared in the Village Voice supplements of February 16, 1976 and February 23, 1976. It is my understanding that this "red-lined" copy of the Village Voice version of the Select Committee's report will appear, along with this and other affidavits, as part of an Appendix to a legal memorandum prepared by Mr. Schorr's counsel in support of his right not to disclose the identity of his confidential news source.

4. The "red-lining" indicates that the words marked by a red box and, in most cases, a corresponding red "X" on copies of the Village Voice version of the Select Committee's final report had publicly appeared, either verbatim or in equivalent form, in either The New York Times, The Washington Post, reports broadcast

over CBS news or in the public hearings of the House Select Committee on Intelligence before the Village Voice published its version of the Select Committee report.

5. I prepared the "red-lined" copy of the Village Voice version of the Select Committee's final report in the following manner. I started with a clean xeroxed copy of the Village Voice version of the Select Committee's final report.

a. I read clippings from The New York Times reporting on the Select Committee's investigation and marked any words in the Village Voice version which had appeared verbatim in the Times' news reports or which conveyed the same meaning and content as the Times' news reports.

b. I then followed the same practice with respect to clippings from The Washington Post reporting on the investigation conducted by the House Select Committee on Intelligence; with respect to transcripts of CBS news broadcasts on the investigation of the Select Committee; and with respect to the published hearings of the Select Committee itself.

c. I then arranged to have printed in clean form the rough "red-lined" version I had been developing.

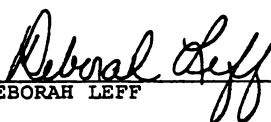
d. The printed "red-lined" version which is attached with this affidavit in Appendix A is thus the result of my labors.

6. A "master" copy of the "red-lined" copy of the Village Voice version of the Select Committee's final report is on file at the law firm of Williams, Connolly and Califano. The precise source of each and every marked out passage -- The New York Times, The Washington Post, CBS news reports or the Select Committee's public hearings -- is correlated on the "master red-lined" copy so that, if necessary, reference can be made to the exact public

- 2 -

source where the information marked out on the Village Voice version of the Select Committee's report had previously appeared.

7. In sum, all information within the red boxes on the "red-lined" copy of the Village Voice version of the Select Committee's final report was a matter of public record as of January 30, 1976.


DEBORAH LEFF

Subscribed and sworn to before me this 8th day of
September, 1976.


Notary Public
My Commission Expires May 14, 1981

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Hearings Conducted .
Pursuant to House Resolution 1042 .
.

AFFIDAVIT OF HERBERT SCOVILLE, JR.

District of Columbia: ss

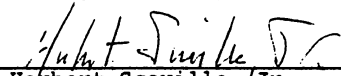
Herbert Scoville, Jr., being first duly sworn deposes and says:

1. I have had widespread experience in the area of national defense and intelligence. From 1963 to 1969 I served as Assistant Director of the Arms Control and Disarmament Agency; from 1955 to 1963 I was Assistant Director and later Deputy Director for Research of the Central Intelligence Agency; from 1948 to 1955 I was Technical Director of the Armed Forces Special Weapons Project of the Department of Defense.

2. I have reviewed a "red-lined" copy of the final report of the House Select Committee on Intelligence as it appeared in the Village Voice supplements of February 16, 1976 and February 23, 1976. It is my understanding that this "red-lined" copy will appear, along with this and other affidavits, as part of an appendix to a legal memorandum prepared by Mr. Schorr's counsel in support of his right not to disclose the identity of his confidential news source. I have been informed by Mr. Schorr's counsel that all information within the red boxes on the "red-lined" copy of the Village Voice version of the Select

Committee's final report was a matter of public record as of January 30, 1976.

3. I have carefully reviewed all material in the "red-lined" copy of the final report of the House Select Committee on Intelligence which is not enclosed by a red box. Based on my expertise in the field of intelligence, defense, and other national security affairs, it is my opinion that publication of the information not enclosed by a red box did not reveal any new information, including information concerning intelligence sources and methods, which could significantly harm the security interests of the United States and was not already widely known by foreign officials, including foreign intelligence agencies.


Herbert Scoville, Jr.

Subscribed and sworn to before me, a Notary Public, this

10th day of September 1976.


Notary Public

My Commission expires: May 14, 1978

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Hearings Conducted .
Pursuant to House Resolution 1042 .
.

AFFIDAVIT OF MORTON H. HALPERIN

District of Columbia: ss

Morton H. Halperin being first duly sworn deposes and says:

1. I am currently the Director of a Project on National Security and Civil Liberties jointly sponsored by the ACLU Foundation and the Center for National Security Studies of the Fund for Peace. This project engages in a number of activities designed to prevent spurious claims of "national security" from being used to erode constitutional procedures or civil liberties. In connection with my work, I have testified before a number of Congressional committees on a variety of national security issues, including covert intelligence operations, wire taps and Congressional oversight.

2. I have had extensive experience in the field of international and defense affairs. From January 1974 to June 1975 I directed a study for the Twentieth Century Fund on Information, National Security, and Constitutional Procedures. From September 1969 to December 1973 I was a Senior Fellow associated with the Foreign Policy Division of the Brookings Institution. Previously I served for more than three years in the Federal government. In 1969 I was a Senior Staff member of the National Security Council with responsibility for National Security Council planning. Before moving to the White House at the start of the first Nixon Administration in 1969, I was a Deputy Assistant Secretary of Defense in the Office of the Assistant Secretary of Defense

(International Security Affairs). I joined the Defense Department in 1966 as a Special Assistant for Planning. Prior to that time, I was an Assistant Professor of Government at Harvard University and a Research Associate of the Harvard Center for International Affairs.

3. I have written a number of books on international and defense affairs including, Bureaucratic Politics and Foreign Policy and Defense Strategies for the Seventies; I was co-author of Strategy and Arms Control and am co-author of a forthcoming book, The Lawless State. I have also contributed articles to a number of newspapers, magazines and journals including, The New York Times, the New Republic, Harpers, Foreign Affairs and Foreign Policy on a variety of subjects related to international and defense affairs.

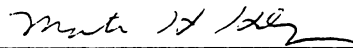
4. I have reviewed a "red-lined" copy of the final report of the House Select Committee on Intelligence which appeared in the Village Voice supplements of February 16, 1976 and February 23, 1976. It is my understanding that this "red-lined" copy will appear, along with this and other affidavits, as part of an appendix to a legal memorandum prepared by Mr. Schorr's counsel in support of his right not to disclose the identity of his confidential news source. It is also my understanding that all information within the red boxes on the "red-lined" copy of the Village Voice version of the Select Committee's final report was a matter of public record as of January 30, 1976.

5. I have carefully reviewed all material in the "red-lined" copy which has not been marked by a red box to indicate that it was a matter of public record as of January 30, 1976. Based on my expertise in the field of international and defense affairs, I have determined that there is no information of any

significance which is not marked by a red box which could not have been known by anyone with a serious interest in the matter discussed even though such an individual had no authorized access to classified information.

6. Based on my expertise in the field of international and defense affairs, it is my opinion that in February 1976, there was no reasonable likelihood that release of the information not marked by a red box in the "red-lined" version of the final report of the House Select Committee on Intelligence would injure national security, the release of this information has not injured national security, and there is no reasonable likelihood that the release of this information will injure national security in the future.

7. Moreover, based on my expertise in the field of international and defense affairs, it is my opinion that in February 1976, there was no reasonable likelihood that release of any information contained in the final report of the House Select Committee on Intelligence which appeared in the Village Voice would injure national security, the release of this report has not injured national security, and there is no reasonable likelihood that the release of this information will injure national security in the future.


Morton H. Halperin

Subscribed and sworn to before me, a Notary Public,
this 10 day of September, 1976.


Notary Public

My Commission expires: Nov 14, 1978

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Hearings Conducted

Pursuant to House Resolution 1042 .
.
.
.....

APPENDIX B TO MEMORANDUM IN SUPPORT
OF DANIEL SCHORR'S CONSTITUTIONAL RIGHT NOT TO
DISCLOSE THE IDENTITY OF HIS CONFIDENTIAL NEWS SOURCE

Affidavits Demonstrating The Need For
Protecting The Identity Of Confidential
News Sources From Compelled Disclosure

1. Affidavit of John B. Kuhns (explaining other affidavits).
2. Affidavit of Jack Anderson, author of a syndicated column.
3. Affidavit of Frances Barnard, Washington correspondent for the Fort Worth Star - Telegram.
4. Affidavit of Robert S. Dudney, investigative reporter for the Dallas Times Herald.
5. Affidavit of Haynes Johnson, national reporter for The Washington Post.
6. Affidavit of Richard Harwood, Assistant Managing Editor for National Affairs of The Washington Post.
7. Affidavit of Clark R. Mollenhoff, Washington bureau chief of the Des Moines Register and Tribune.
8. Affidavit of Richard E. Neustadt, Professor of Government at Harvard University.

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In re Hearings Conducted .
Pursuant to House Resolution 1042 .
.

AFFIDAVIT OF JOHN B. KUHN

District of Columbia: ss

JOHN B. KUHN, having been first duly sworn according to law, deposes and says:

1. I am an associate at the law firm of Williams, Connolly & Califano, 839 17th Street, N.W., Washington, D. C.

2. In the course of my work at the law firm, I have received and filed in federal and state courts a number of affidavits from reporters which demonstrate that confidential news sources are essential to the preservation of a free flow of information to the public, and that the issuance of subpoenas to reporters and efforts to compel disclosure of the identity of confidential sources has a chilling effect on the news gathering process.

3. Attached to this affidavit are a representative sample of these affidavits by journalists which have previously been filed in courts throughout the country to demonstrate the importance of confidential sources to a free press.


JOHN B. KUHN

Subscribed and sworn to before me this 11th day of September, 1976.


Notary Public

My Commission Expires May 14, 1982

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In Re:

Proceedings of the Grand
Jury Empanelled December 5,
1972 Application of Spiro T.
Agnew

Civ. No. 73-965

Richard Cohen, et al.,

Movants

AFFIDAVIT OF JACK ANDERSON

STATE OF MARYLAND)
) ss.:
COUNTY OF MONTGOMERY)

JACK ANDERSON, being first duly sworn, deposes and
says:

1. I am the author of The Washington Merry-Go-Round,
a syndicated column distributed by United Feature Syndicate to
950 newspapers in this country and abroad.

2. I began my career in journalism at the age of 12
when I obtained a salaried position in 1935 as a reporter with
the Murray Eagle, a weekly newspaper published in a suburb of
Salt Lake City. Two years later I joined the staff of the Salt
Lake City Tribune and, by 1941, I was a reporter on the city desk
of that newspaper. During World War II I was accredited as a war
correspondent and spent considerable time in China, including a
period of several months with a Nationalist guerrilla force behind
Japanese lines. After the war, I spent a period of time covering
a Chinese Communist mission in Chungking headed by Chou En Lai.
In 1947 I joined Drew Pearson who was then the author
of The Washington Merry-Go-Round and I have continued working with
that syndicated column since that time.

3. Soon after I joined Mr. Pearson, I became his chief
investigative reporter and I worked on and developed most of the

major investigative stories for The Washington Merry-Go-Round while Mr. Pearson was its author. I assumed the authorship of that column following Mr. Pearson's death in 1969. In 1972 I was awarded the Pulitzer Prize for National Reporting for my stories on revelations of secret documents concerning United States policy during the India-Pakistan war.

4. Over the years my staff and I have developed a number of reliable confidential sources at all levels of government and outside of government who have been invaluable to me in my work as an investigative reporter. Without those sources most of the stories I have written on corruption and deceit in government would never have been published. I could cite scores of such stories, but a few examples will suffice.

a. On December 6, 1971, President Nixon told the leaders of Congress that the United States was adopting a neutral posture in the brief but tragic war between India and Pakistan. The following day Henry Kissinger, the President's principal advisor in foreign affairs, denied reports that this country's policy favored Pakistan over India in that conflict. I obtained top secret documents from some of our confidential sources which showed that, at the same time that President Nixon and Dr. Kissinger were making their statements, top foreign policy and military advisors were being told that the Nixon Administration wanted to develop a policy that would provide aid and support to Pakistan. Those documents also showed that the United States was planning to dispatch a military task force to the Bay of Bengal on a contingency basis. The documents further

revealed that the Soviet Union had promised India to intervene with a naval task force to support Pakistan. In a subsequent report to Congress, President Nixon sought to justify his decision to follow a pro-Pakistan policy, which tacitly admitted the accuracy of the columns I had written based on top secret documents we had obtained from our confidential sources. It was this story that resulted in my award of the Pulitzer Prize.

b. I revealed in my column that ITT had made a substantial contribution to defray the costs of the Republican National Convention in San Diego in the hope of obtaining favorable action from the Justice Department in settling anti-trust litigation pending against ITT. Our sources were employees of ITT. These sources provided us with the now-famous memorandum of Dita Beard which spelled out the connection between the ITT contribution to the Republicans and the pending anti-trust litigation. That memorandum later became a focal point in the hearings on the confirmation of Richard Kleindienst as Attorney General. Our sources were able to provide us with other information that was subsequently confirmed at those hearings. For example, our sources informed us that ITT personnel were resorting to a paper shredding machine to keep other potentially embarrassing documents from public notice. Our sources also told us that Felix Rohatan of ITT had visited with Mr. Kleindienst on several occasions to discuss the anti-trust litigation. Mr. Kleindienst had, prior to this revelation, denied any involvement

in the settlement negotiations in that litigation. I doubt that much of the information considered at the confirmation hearings would have become public knowledge if it had not been revealed to us by our confidential sources.

c. Our sources also provided us with documentation showing that high officials of ITT had actively sought to prevent Salvador Allende from taking office as President of Chile following the elections in that country in 1970. As a result of those revelations in my column, a Senate Foreign Affairs Subcommittee has begun an investigation into the power of international conglomerates and their impact on United States foreign policy.

d. Four confidential sources holding high positions in the United States Government told us that Auguste Record, the top trafficker in narcotics in the Western Hemisphere, was continuing to operate his drug empire from a rather comfortable cell in a jail in Paraguay. A Deputy Assistant Secretary of State contacted us to object to the columns written on the basis of that information, complaining that our revelations would thwart this country's efforts to extradite Mr. Record for prosecution here. He explained that those efforts had been unsuccessful so far and that the publicity surrounding my columns could only further hurt those efforts. We suggested that the columns would have precisely the opposite effect. He responded by saying that, if we were right, we could claim full credit for Mr. Record's

extradition. As it turned out, we were right. The columns prompted Paraguayan officials to extradite Mr. Record to rid themselves of an embarrassment but also led to more vigorous efforts of Paraguay to clamp down on drug traffic.

e. I wrote a series of columns recently revealing a new wave of payola in the broadcasting industry. Those columns showed that disc jockeys were being bribed by the recording industry to play records in the top 40. Unlike the earlier payola scandal in the late 1950's, the disc jockeys in this new scandal were being bought by more than cash payments or free trips. My columns showed that the record industry was supplying the disc jockeys with prostitutes and narcotics to have them play records on their programs. My columns were based on information supplied by confidential sources within the recording industry. The Federal Communications Commission initially expressed a sense of disbelief when confronted with my columns. However, the Commission subsequently acknowledged that my columns raised significant questions concerning the regulation of broadcasting, and the Commission has now launched a full-scale inquiry into the payola scandal.

f. I revealed in a column that Arthur Watson, then United States Ambassador to France, had become drunk and obnoxious on a commercial airline flight from Paris to Washington. The information on that incident was provided on a confidential basis by some of the crew members of the Pan American flight involved, despite urgent directives by Pan

American that no crew member talk to the press about the incident. Most of those who read my column probably viewed the incident as nothing more than an embarrassing escapade by a public official. However, at the time of the incident Mr. Watson was en route to the United States to obtain instructions for conducting sensitive negotiations with officials of Communist China. I knew from my experience as a war correspondent in China during World War II that the Chinese intensely dislike public displays of drunkenness. It was my feeling that Mr. Watson's behavior on that commercial airliner would be an acute embarrassment to the United States in the upcoming negotiations and that the Chinese might view the designation of Mr. Watson to conduct those negotiations as an insult to them. Shortly after I revealed that incident, the United States gave the Chinese private assurances that Mr. Watson would have no authority over the substance of the negotiations and Mr. Watson later resigned from his post as Ambassador.

5. The above are only a few of the many examples I could cite of stories that I developed only because of information provided by confidential sources. Information provided to us by confidential sources has also been responsible for ferreting out corruption in government and among public officials. For example, information we developed led to the censure of former Senator Thomas Dodd of Connecticut and the conviction of an aide to Congressman James Collins of Texas on a kickback scheme.

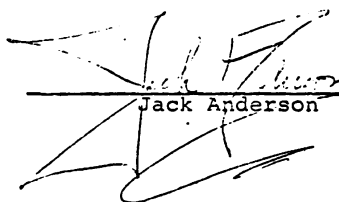
6. The information supplied to us by confidential sources has significantly expanded public knowledge and awareness of crucial aspects of the operation of their government and has led to affirmative actions by legislatures and the courts to curb dishonesty and corruption in government. Without those confidential sources, many of the abuses that we have revealed would never have been known and might still exist.

7. It has taken me years to develop the confidential sources of information that I now rely upon on a regular basis. My sources are people who view their primary obligation as being to principles of open and honest government in a democratic society. They view deceit and corruption in general as a most debilitating force in a democratic form of government. They are not "anti-government" or "anti-Administration"; rather, they are anti-corruption.

8. Any action that would shut off my access or the access of other newsmen to sources of information that we rely upon would post a substantial threat to the people's right to know about the operations of their government. As a democratic society, we have properly rejected the heavy-handed censorship techniques of totalitarian governments to keep information from the public. However, there has been an increasing trend in recent years to achieve the same results by shutting off newsmen from access to information about the operations of government. If these efforts are successful, the public will know only what the Administration in power wants it to know and we will become indistinguishable from the totalitarian regimes.

9. The efforts to expose the confidential sources of newsmen through subpoenas have already had an impact on my investigative techniques. One source at the White House that I had relied upon over a period of time will no longer talk to me.

That source has told me that he now fears that, if his identity is revealed, he will lose his job and might be prosecuted. So far, the other confidential sources that I rely upon on a regular basis still seem willing to continue their relationship with me. However, I am concerned that the present climate will make it more difficult for me to develop confidential sources in the future. Generally it takes me up to a year to develop a working relationship with a source and to satisfy myself that he or she is reliable. My fear is that, because of the present concerted efforts to expose the confidential sources of newsmen, I will find it increasingly difficult to find individuals in government who will be willing to talk to me on a confidential basis.


 Jack Anderson

Sworn and subscribed to
 before me this 24 day of
 October, 1973.


 Notary Public

My Commission Expires Jan. 31, 1979

Appendix J

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

NON COMMISSIONED OFFICERS ASSOCIATION
OF THE UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ARMY TIMES PUBLISHING COMPANY,

Defendant.

Civil Action No.

SA-74-CA-222

AFFIDAVIT OF FRANCES RODERICK BARNARD

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

ss.:

FRANCES RODERICK BARNARD, being first duly sworn, deposes and says:

1. I am a Washington correspondent for the Fort Worth Star-Telegram. I graduated from the University of Texas in 1970 and have worked as a journalist for the past five years. During that time I have written for a number of newspapers including the El Paso Times, the Temple Telegram and the Sherman Democrat.

2. I have won the following awards for my work: Associated Press Managing Editors Award; Texas Managing Editors Award; Roy Howard Citation; Texas Gridiron Award for first place in investigative reporting; Pulitzer Prize Nomination for a distinguished example of reporting on national affairs.

3. It is generally understood in the newspaper profession that a source is any person who provides a newsman with information in the course of preparing a news story regardless

of whether that information is actually published. Frequently, sources provide background information or confirm information provided by others.

4. Throughout my career, there are many instances in which I have obtained important and newsworthy information from persons who would only talk to me on the condition that I promise not to reveal their identities. I have always honored those promises.

5. The following is only one of many examples from my personal experience in which an assurance of confidentiality of the source was essential in order for the public to obtain important information.

6. In July, 1974, an employee of the congressional placement office called me and said he wanted to talk to me about "something serious". However, he added that he would only talk to me on the condition that I promised never to reveal his identity. I assured him that I would not reveal his identity and he then told me that he had discovered three congressional job order forms which he thought indicated racial discrimination.

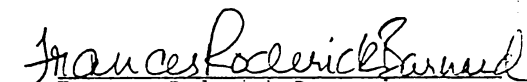
7. I urged my source to check the records further to determine whether the practice was widespread. I subsequently had several secret meetings with him during the course of which he provided me with copies of discriminatory congressional employee request forms. Ultimately, he provided me with forms establishing more than 30 examples of overt racial and religious discrimination and many others connoting sex and age bias.

8. As a result of the information provided me by my confidential source, I was able to publish an article on August 18, 1974 reporting that discriminatory hiring practices existed in

at least 20 congressional offices. This article, a copy of which is attached as Exhibit 1, appeared in the Sunday editions of the Fort Worth Star-Telegram and the Washington Post, and the Associated Press rewritten version received prominent play across the country.

9. Subsequent to the initial story, I developed other confidential sources who provided me with information which enabled me to write a number of follow-up articles. For example, a source who would only talk to me after I promised never to disclose his identity nor contact him during work hours at his office informed me of the turmoil and widespread disagreement within the Joint Committee on Congressional Operations over the way to address the charges of discrimination in its report to the Congress. Copies of several of these follow-up articles are attached as Exhibits 1, 2 and 3.

10. As a result of my articles on discriminatory congressional hiring practices, House Rules have been amended to prohibit discrimination in hiring, the U.S. Civil Rights Commission has announced an investigation into discriminatory hiring practices in Congress, and several Congressmen have dismissed those staff members allegedly responsible for the discriminatory requests. Without the information provided by my sources on the condition that I promise not to reveal their identities, I could not have written those articles.


Frances Roderick Barnard

Subscribed and sworn to
before me this 7th day
of May, 1975.


Notary Public

My Commission Expires June 14, 1977

Appar & D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

NON COMMISSIONED OFFICERS	§	
ASSOCIATION OF THE UNITED	§	
STATES OF AMERICA, et al,	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. SA 74-CA-222
	§	
ARMY TIMES PUBLISHING	§	
COMPANY, Defendant	§	

AFFIDAVIT OF ROBERT S. DUDNEY

THE STATE OF TEXAS	§
COUNTY OF DALLAS	§

ON this the 5th day of May, 1975, before me the undersigned,
a Notary Public in and for Dallas County, Texas, personally appeared ROBERT
S. DUDNEY, well known to me, who being by me first duly sworn, on oath did
depone and say as follows:

1. My name is Robert S. Dudney. I reside in Dallas, Texas.
I am a reporter for The Dallas Times Herald in Dallas, Tex., having held that
position since Oct. 6, 1973. During this time period I have also held correspondent
positions with Time Magazine, Money Magazine and New Times Magazine on a
regular paid-assignment basis. Prior to Oct. 1972 I worked as a reporter for
two years with The Columbia Missourien, Columbia, Mo. The tenor of my work
at The Times Herald has been of a sensitive research, or investigative, nature.
2. I have won a number of major awards during my years as
a reporter, which include:

The Associated Press Managing Editors Award for Public Service Reporting .

The Sigma Delta Chi Award for Community Service reporting involving work of an investigative nature.

The Austin, Tex. Headliners Club Statewide Award for Investigative Reporting .

The annual Southern Methodist University Award for distinguished work in journalism.

The Dallas Press Club Award for outstanding investigative work in the field of economics.

The annual University of Missouri citation for the outstanding single article published in that area.

3. Throughout my career as a journalist I have relied on many occasions on confidential sources of information for material used in my stories. These individuals, in most cases, agreed to talk to me candidly about a particular subject only after I had guaranteed them anonymity and protection from disclosure. Further, many of these confidential sources required, as a precondition to such candid discussion, that any information given by them would not be used in such a way as to indirectly identify where the information came from. I have frequently given such assurances during my career and have made every effort to honor these pledges--even to the point of shielding their identities from my own editors. Most of the significant stories I have written have resulted either directly or indirectly from sources who were, and remain, unnamed and confidential.

4. I have personal knowledge from my career as a journalist, and from close associations with reporters on my own paper and on others in the United States, that guarantees of anonymity are tendered to confidential sources of information on a daily basis. It also is my experience that such

assurances are not taken lightly by any responsible reporter who makes the decision to protect a source. This, in my opinion, stems from the fact that reporters--like the subjects about whom they write--would rather name those persons who provide the underpinning of their articles. It has also been my experience, however, that such identification would almost certainly result in harrassment and retribution against the persons who, in giving sensitive information to reporters, seek to expose wrongdoing and corruption in public and private circles and for this do not deserve recrimination. Any action which would indicate to these individuals that disclosure of their identities could be forced upon the reporter would have a chilling effect upon the flow of information they provide at their own peril. The result almost certainly would be the disappearance of investigative reporting about matters of extreme public interest as we know it today.

5. Over the years I have developed a number of confidential sources of information which experience and subsequent events have proven, to my satisfaction, to be reliable in their reconstruction of facts and events. Many of these persons I have known for years and a confidence in respective abilities has developed. These individuals are at all levels of government--local, state and federal--as well as in the private sector. Without them most of the stories about deceit in government likely never would have been recognized, much less published. A few of them can be cited.

a. In December, 1973, I wrote a story detailing Dallas County Sheriff Clarence Jones' failure to collect more than \$2.3 million in bail bonds forfeited by criminals who had fled before standing trial. The overwhelming bulk of this total could be traced back to bail bondsmen who had prior criminal conviction records for fraud, burglary, fencing and transport of stolen merchandise. These individuals, at the time of the story, were still in business in Dallas County and more and more prisoners were getting out on

bail bonds which had no financial worth to them. I became directly involved in this official corruption as a result of a key individual in Dallas County government who outlined the problem and directed me to well-hidden records I eventually used to document the story. Six separate investigations, federal, state and local, grew out of this and stories which followed. New and tighter rules for the acceptance of bail bonds, plus indictments for fraud, have now reduced the uncollected rate to a trickle and hardened criminals no longer find it so easy to get out of jail on bond. For nearly one year, however, embarrassed county officials have sought to learn "who blew the whistle".

b. In May, 1972, a confidential source delivered to me certain documents which established Dallas County Judge W. L. Lew Sterrett's knowledge of the irregularities in the Sheriff's bail bond system as early as 1960, which was viewed as a startling disclosure since the Judge, involved in a difficult re-election campaign, for six months denied any knowledge of the bail bond frauds in his own courthouse. Judge Sterrett's lack of disclosure to the public was revealed in the May 22 story. After his defeat at the polls in November, which many observers attributed to his involvement in the bail bond scandal, Sterrett himself singled out The Dallas Times Herald's reporting as the single major cause of his ouster after twenty-six years in office.

c. In August, 1974, I wrote a story about Rockwall County Sheriff W. J. Price's acceptance of \$22,000 in laundered cash from a Dallas bail bondsman in return for the sheriff's signature on bail bonds "certifying" they were valuable and carried adequate real estate collateral to back them up. This bondsman's bail bonds had no value to them at all and eventually became almost \$2 million worth of uncollectible liabilities on Dallas County's record books. The details of the cash payments came as a result of confidential sources who had access to non-public records and took a great risk in bringing them to me. The U. S. Internal Revenue Service initiated an investigation which determined the sheriff had paid no taxes on the \$22,000.

d. In the fall of 1974 a confidential source in the Dallas securities industry outlined examples of fraud, deceit, nepotism and sophisticated stock kickbacks involving the City of Dallas employees retirement fund and its manager, City Auditor Lynn Crossley. Leads from this confidential source resulted in a story I wrote Dec. 1, 1974 in which I documented the fact that most of the brokerage profits generated by the fund's securities transactions had gone to brokerage firms where the manager's son, Michael Crossley, was employed.

e. Shortly after the initial story about the city pension fund, I obtained confidential documents from five sources in the Dallas securities industry verifying that City Auditor Crossley had used his influence over the fund to extort lucrative "hot issue" stock deals from brokerage houses all over the city. These sources also provided me with information about how Crossley had managed to conceal the transactions from law enforcement authorities for several years--by laundering the stocks and funds derived from them through an anonymous account in a Dallas bank. The story appeared on Dec. 29, 1974. This and the Dec. 1 story prompted a full-scale investigation by the U. S. Securities and Exchange Commission for fraud and conflict of interest which is currently underway.

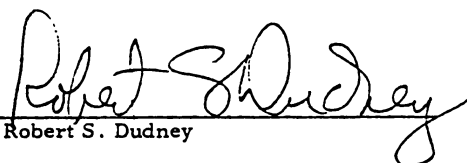
f. On March 30, 1975, I wrote a story about how the pension fund manager, Lynn Crossley, had pleaded his Fifth Amendment privilege against self-incrimination to all requests by the Securities and Exchange Commission for his testimony and records pertaining to his handling of the city fund. Since the initial story had appeared, Crossley had publicly contended he had nothing to hide and would submit to any "proper" authority any and all records of stock transactions. This story established that Crossley, even in the secret federal proceedings, was continuing to be uncooperative and perhaps, indeed, had "something to hide". The facts of this story were revealed totally by confidential sources and could not have been learned any other way.

g. On April 13, 1975, I wrote a story about how Texas' state police agency, The Department of Public Safety, was protecting three of the state's biggest bookmakers because they were also DPS informants. The story also alleged the state police's use of these individuals as informants had caused serious problems with federal and local law enforcement officers and constituted what seemed to be a perversion of the entire informant program. The details of this situation, the great bulk of which still is too sensitive to publish, came exclusively from sources in all levels of government and bookmakers themselves who would be placed in extreme jeopardy if their identities were ever revealed. In the short time since publication of this story, several state legislators have called publicly for an investigation into the informant techniques used by the state police, and the apparent perversion of an otherwise necessary and vital area of law enforcement.

6. The information I have obtained, directly and indirectly from these confidential sources has significantly expanded public knowledge and awareness of local and state officials and government operations and has led to responsible and sincere actions by councils, courts, regulatory bodies and legislators in matters of vital interest to the community. There is every reason to believe that without these sources of information I would no longer be in the position of being able to furnish insight on government affairs to Dallas and Texas citizens.

7. The tradition of investigative reporting is not as strong in Texas as it is in other parts of the United States and I, as an investigative reporter, have experienced the difficulties of trying to establish sources who are at the same time reliable and confident of my ability to handle their information and careers with utmost care. I have seen the veil over official corruption, blundering and deceit lifted somewhat because of the persons who, assured of

anonymity, come forward with the true--if embarrassing--facts. I firmly believe that most if not all of the individuals would lose their jobs, their positions and, in some cases, possibly their lives, if I were ever forced to come forward with their names at any time. I am loathe to being a party to the destruction of this delicate process which has taken so much time and effort to establish.


Robert S. Dudney

SWORN TO AND SUBSCRIBED BEFORE ME on the 5th day of
May, 1975, to certify which witness my hand and seal of office.


Notary Public in and for Dallas County,
Texas

(Seal)

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

DR. FRED L. DUNN, et al., :
Plaintiffs :
vs. : Law No. 7250
MORKAP PUBLISHING COMPANY, et al, :
Defendants :

AFFIDAVIT OF HAYNES JOHNSON

CITY OF WASHINGTON)
) ss.:
DISTRICT OF COLUMBIA)

HAYNES JOHNSON, being first duly sworn, deposes and says:

1. I am a national reporter for The Washington Post. I have been a Washington-based journalist for 16 years, in a number of capacities for both the Washington Evening Star and The Washington Post. I have served as a city reporter, a copy editor, an Assistant City Editor, national affairs rewriter, and on special assignments in the United States and overseas.

2. I hold a Masters Degree in American History from the University of Wisconsin and I am the author of a number of books: Dusk at the Mountain, a history of the Negro in Washington, D.C. (Doubleday, 1963); The Bay of Pigs, a history of the Cuban invasion of 1961 (Norton, 1964), and Fulbright: The Dissenter, a biography (Doubleday, 1968). Each of these books was rated as among the ten most important works in their respective categories by the New York Times Literary Supplement in their respective years of publication. I am also the co-author of three other books: KKK: The Invisible Empire (Norton, 1967); The Army in Anguish (Pocket Books, 1972); and The Unions (Pocket Books, 1972).

3. I have won several major journalistic awards for reporting, including the Pulitzer Prize for Distinguished National Reporting in 1966. That award was given for my reporting of the civil rights conflict in Selma, Alabama during the year 1965.

4. Throughout my career I have relied on many occasions, and for many of the most important stories which I have written, on information obtained from persons who would talk to me only after being assured that the information they provided would not be used in any way which would reveal their identities, and that their identities would be kept secret. I have frequently given such assurances to individuals in order to obtain information from them and have always honored those assurances.

✓ 5. It is generally understood in the journalism profession that a source is any person who provides a journalist with information used in preparation of a news story regardless of whether that information constitutes fact or opinion, and regardless of whether the information is published, used for background information, or is used for confirmation purposes.

6. I have personal knowledge from my many years as a reporter that such assurances are given by investigative reporters virtually on a daily basis. Information obtained from such sources frequently leads to the stories most important to the public interest. I also have personal knowledge that without the information obtained from individuals who require such assurances before they will provide information, journalism as we know it today in this country could not function.

✓ 7. Frequently, I rely on confidential sources to confirm information given me by others. Without confirmation from reliable confidential sources, I would question the accuracy and/or usability of much information that I receive and would

refrain from publishing articles based on such information.

8. Although I could cite many instances from my experience in which stories were broken to the public and facts were learned as a result of information revealed only after promises of confidentiality, I shall here describe only one.

9. In connection with my reporting of the Selma civil rights story, referred to above, I received information and indispensable background material from a number of individuals who first made me promise not to reveal their identities. The information and background material which these individuals provided formed much of the substance of many of my major articles published during the six month period I spent in Selma beginning in January of 1965 and ending in July of 1965. Copies of some of these articles are attached hereto as Exhibits 1-6.

10. Shortly after I arrived in Selma, early in January, 1965, I began making inquiries about the situation that was developing there. Through a contact in the civil rights movement whom I had known from my early writing concerning other national disturbances, I was advised particularly to contact a certain black leader in Selma. But, I was told, that leader would talk to me only if I would give him the most solemn pledge that I would never reveal his name nor in any way identify him, nor write anything that could associate him with information which I might report. Such an assurance was critical, it was stressed to me, because if I disclosed the identity of this individual his livelihood -- indeed, his life -- would be in jeopardy.

11. The stricture was based in fact. For it is a fact known personally to me that blacks had been beaten in Selma, that there had been murders, that economic retribution was being employed as a method of coercion and intimidation, and that in the midst of the Selma stories two persons were murdered in cold blood

in Selma in connection with their civil rights protest activities.

12. I agreed to the stipulation of confidentiality, and then was taken to meet this black man. He repeated to me, even more forcefully, how critical it was that I never use his name or disclose his identity. He was particularly afraid of what would happen to him after the national civil rights marchers and the federal marshals who had been ordered there had left Selma. Again, I reassured him that I would always keep his confidence. He then agreed to talk with me. I never have revealed his name.

13. I met him, in his house, in the Negro section of Selma, literally night after night over many months. He told me he was the person who had first tried to get blacks involved in registering to vote in Selma, but even among blacks he exercised that role secretly. When these registration efforts had failed, he had been instrumental in requesting that Dr. Martin Luther King Jr., bring his Southern Christian Leadership movement to Selma to help. This source told me of private meetings among blacks in the days before King came to Selma in 1965; of their dealings with Selma officials and Selma businessmen, the bankers and others who comprised the leading economic interests in the city; of acts of brutality and harassment and threats made against blacks; of meetings held in privacy between the local and King forces after the conflict had begun; of names of men in Sheriff Jim Clark's force who had manhandled blacks; of suspected members of the Ku Klux Klan in the Selma area, including those who were city officials; of a secret Klan meeting place along the road from Montgomery to Selma. (The latter, in fact, was the same Klan center that later figured in the murder of Mrs. Viola Liuzzo on that highway during the Selma crisis, a murder that lead President Lyndon B. Johnson to denounce the Klan as "a hooded society of bigots" and of his dispatch of FBI agents to Selma to apprehend

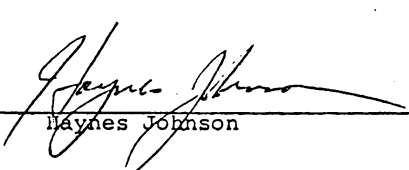
the murderers. The President later announced the arrest of members of the Klan in connection with that murder.)

14. All of this information figured prominently in the articles -- there were probably as many as 100 -- that I wrote from Selma during those months. These articles helped to convey the broader implications of what the Selma events represented to the national interest. For instance, the St. Louis Post-Dispatch said editorially that my reporting from Selma was instrumental in helping create the climate that led to passage of the Voting Rights Act of 1965.

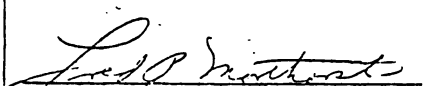
15. I could not have done so adequate a job, and the stories would not have been written as they were, without the help of the news source mentioned above -- and others to whom he introduced me, and who required similar assurances of confidentiality -- in that period.

16. The great seriousness with which this man regarded the confidentiality of his conversations with me is shown by the fact that he always asked me to come around to the back of his home, and to talk to him in a small room at the rear -- as far away from the street as possible. Our conversations were held after dark.

17. Writing this now, with the added benefit of hindsight, I can attest that this man's fears were real indeed and his concerns were well founded. I can also attest that he enabled me to report information that was not otherwise available, and that those reports did have an impact on my primary audience in Washington, D. C.


Haynes Johnson

Subscribed and sworn to before
me this 5th day of November
1973.


Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In Re:

Proceedings of the Grand
Jury Empanelled December 5,
1972 Application of Spiro T.
Agnew

Civ. No. 73-965

Richard Cohen, et al.,

Movants

AFFIDAVIT OF RICHARD HARWOOD

CITY OF WASHINGTON)
) ss.:
DISTRICT OF COLUMBIA)

RICHARD HARWOOD, being first duly sworn, deposes and
says:

1. I am employed by The Washington Post in the
position of Assistant Managing Editor for National Affairs. I
have held this position since September 1971. I have been a
journalist for approximately 25 years -- as a reporter for the
Nashville Tennessean, a reporter and Washington correspondent
for the Louisville Courier-Journal and the Louisville Times,
national and foreign correspondent for The Washington Post, and
columnist and critic for The Washington Post prior to my present
assignment.

2. I have won the following awards for my work:
Nieman Fellowship at Harvard University; Carnegie Fellowship at
Columbia University; George Polk Memorial Award for National
Reporting; Sigma Delta Chi Medal for National Reporting; George
Polk Award for Criticism; and others.

3. In the course of my career I have repeatedly found
it necessary to give assurances of confidentiality to individuals
in order to obtain information of public interest and importance.
There have been many instances of this in my experience, on

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& CALIFANO
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338-4303

virtually a daily basis.

4. A classic -- but not unusual -- example involved stories of newspaper reports concerning the Central Intelligence Agency which I wrote in 1967. (See Exhibits 1-2 attached hereto.) These stories could not and would not have been written but for information supplied by individuals who would not supply it until first being assured that their identities would not be revealed.

5. In 1967, following an article which appeared in Ramparts magazine which said that the National Student Association had been subsidized for a number of years by the Central Intelligence Agency (CIA), I was assigned to determine if other private organizations had received similar subsidies.

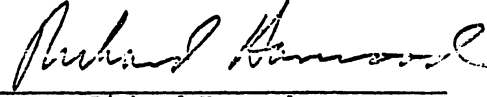
6. From a source outside the CIA (an individual who insisted that I preserve his anonymity) I was able to develop a method for exploring the subject. I learned that various private foundations had been used as conduits for CIA funds, and that small "parent" foundations scattered around the country were disbursing agents for large CIA grants.

7. I was able to determine that many labor unions, the National Education Association, the American Newspaper Guild, numerous academic and research institutes and publications, and various other ostensibly private groups were receiving CIA money to carry on activities that were essentially propagandistic in nature. In some cases, the recipients of this money were unaware of its source.

8. Throughout this investigation, I was aided by information obtained from the individual referred to and from other individuals who provided it only on condition that their identities would never be revealed. Without that information, this series of articles could not have been written. I have not

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revealed their identities in any case.



Richard Harwood

Subscribed and sworn to
before me this 5th day of
October, 1973



Notary Public

My Commission Expires Jan. 31, 1973

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& CALIFANO
1000 HILL BUILDING
WASHINGTON, D. C. 20036
AREA CODE 202
426-1542

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

DR. FRED L. DUNN, et al., :
 :
 Plaintiffs :
 : Law No. 7250
 vs. :
 :
 MORKAP PUBLISHING COMPANY, et al.:
 Defendants :

AFFIDAVIT OF CLARK R. MOLLENHOFF

CITY OF WASHINGTON)
) ss.:
 DISTRICT OF COLUMBIA)

CLARK R. MOLLENHOFF, being first duly sworn, deposes
 and says:

1. I am chief of the Washington bureau of the Des Moines Register and Tribune, having held that position since July 7, 1970. Prior to that, I served as special counsel to President Nixon. I have also served as Washington correspondent for Cowles Publications for a period of nineteen years, as well as a reporter for the Des Moines Register for eight years.

2. I am the author of a number of books:

Washington Cover-up, a study of the history of Congressional investigations of government mismanagement (Doubleday, 1962);

Tentacles of Power, a history of labor racket investigations (World, 1965);

Despoilers of Democracy, a study of problems of government mismanagement and corruption from 1960 to 1965 (Doubleday, 1965);

The Pentagon, a study of the history of American defense problems (Putnam, 1967);

George Romney -- Mormon in Politics,
(Meredith Press, 1968);

Strike Force, (Prentice-Hall, 1972).

3. I have won a number of major awards for investigative reporting which include:

Pulitzer Prize for National Reporting,

The Sigma Delti Chi Award for Washington Correspondents,

The Sigma Delti Chi Award for Public Service in Newspaper Journalism,

The Raymond Clapper Memorial Award for Washington Correspondents,

The Heywood Broun Memorial Award.

4. Throughout my career I have relied on many occasions, and for many of the most important stories which I have written, on information obtained from persons who would talk to me only after being assured that the information they provided would not be used in any way which would reveal their identities, and that their identities would be kept secret. I have frequently given such assurances in order to obtain from them information and have always honored those assurances.

5. I have personal knowledge from my many years as a journalist that such assurances are given by investigative reporters virtually on a daily basis. Information obtained from such sources often leads to the stories most important to the public interest. I also have personal knowledge that without the information obtained from individuals who require such assurances before they will provide information, investigative reporting as we know it today could no longer exist.

6. Summarized below are examples of stories that would not have been possible were it not for assurances of confidentiality.

7. Confidential sources disclosed details of frauds

involving Polk County, Iowa welfare funds. The information from the inside served as a clear guide to public records for documentation of the frauds, exposure, indictment and conviction of many of the county officials involved.

8. Confidential sources gave me information on the manner in which a Chicago underworld figure obtained a federal basic permit to wholesale beer in Iowa despite a criminal record. He was using the permit to muscle out other beers. A series of stories over a period of months and years exposed his background, broke his power over local officials, resulted in defeat of several local officials, and led to a full expose' of his activities by the Kefauver crime committee.

9. Confidential sources in Iowa delivered secret state records on tests on a salt base antifreeze showing the State was on notice that it would destroy motors when the product was licensed. A series of stories exposed the situation, forced cancellation of the license to sell the product, and nearly upset the State Secretary of Agriculture who was the errant official.

10. Confidential sources gave me tips on misuse of law enforcement priorities in the purchase of new automobiles in Polk County, Iowa, which enabled a local gambler and boot-legger to buy a new Pontiac. Subsequent search of car transfer records showed more than a dozen illegal or highly questionable cases of purchase and quick transfer of new cars. Indictments were returned, but were dismissed on technical points.

11. Confidential sources revealed plans to fix court cases for local political figures in Polk County, Iowa through a friendly outside judge, who was in theory above the local political scene. Subsequent stories revealed the judge's back-

ground and resulted in his withdrawing from the case. The trials resulted in convictions.

12. Confidential sources delivered information from a staff report of Senate Privileges and Election Subcommittee involving questionable political and financial operations on the late Senator Joseph R. McCarthy (Rep., Wis.). Exclusive stories in the Des Moines Tribune and the Providence Journal forced committee publication of the staff report that had been bottled up by the reluctance of the Senate to face up to its responsibility. This led to the later speech by Senator Flanders (Rep., N.H.) and the McCarthy censure action.

13. Confidential sources on the financial affairs in the Teamsters Union led to indictments and convictions of Minneapolis Teamster Union officials on Taft-Hartley law violation involving union funds and welfare and pension funds. Eventually, this series of stories, aided by still more confidential sources, led to the broader inquiry of the Select Committee on Improper Activities in the Labor Management Field, passage of the Landrum-Griffin law, and indictment and conviction of literally hundreds of labor union officials and management representatives.

14. Confidential sources revealed allegations of fraud by Robert G. (Bobby) Baker, and political maneuvers to kill the Senate inquiry, as well as to remove the special prosecutor who had been assigned to the case. The resulting stories forced a more vigorous investigation and full prosecution and conviction.

15. Confidential sources and corroboration revealed details of James R. Hoffa's role in jury tampering efforts and pension fund frauds that permitted me to be certain of leads and supported by secret corroboration. Hoffa was eventually indicted, convicted and imprisoned. My confidential sources were a vital part of my role in getting Robert F. Kennedy interested

in the Hoffa and Beck investigations.

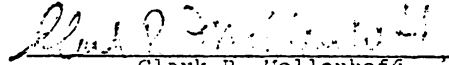
16. Confidential sources at the Pentagon provided periodic information on Defense Department efforts to mislead the Senate Permanent Investigating Subcommittee on the probe of the F-111 warplane contract with General Dynamics. Confidential sources first informed me that records at the Pentagon would establish that Boeing was the unanimous choice of the Pentagon Source Selection Board on the basis of both price and performance.

17. Confidential sources first tipped me on the factors of possible "conflicts of interest" on the part of Deputy Secretary of Defense Roswell Gilpatric and Navy Secretary Fred Korth. These were subsequently documented by the McClellan committee, and criticized in the final report.

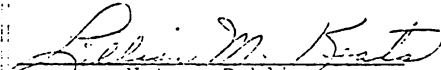
18. Confidential sources alerted me to certain irregularities in the NASA award of the Apollo contract to North American Aviation rather than Martin Marietta. This information was important in my own early assessment of the relationship of various political figures who made financial gains from the award to North American Aviation, and in eventually bringing out the facts through Senatorial questioning of NASA officials in the months after the disaster that killed three young astronauts.

19. Confidential sources gave me information of how Alfred Lawson, leader of a Des Moines cult, was able to obtain tax-exempt status for his Des Moines University of Lawonomy despite the fact he was barred from tax-exempt status by local and state tax officials. He had parlayed the IRS tax-exempt status into a racket for purchasing surplus machinery and machine tools for a token sum, and reselling them for huge profits. The IRS sources also gave me information that resulted in exposure of

laxity on policing of all tax-exempt organizations. A Congressional investigation was launched, and the rules on secrecy of tax-exempt organizations were changed to provide full public disclosure on their reports.


Clark R. Mollenhoff

Subscribed and sworn to
before me this 3rd day of
November, 1973


Notary Public

NOT COMMISSION EXPIRES MAY 14, 1975

In Re: :
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Proceedings of the Grand :
Jury Empanelled December 5, :
1972 Application of Spiro T. : Civ. No. 73-965
Agnew :
: :
Richard Cohen, et al., :
: :
Movants :
:

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

1. I am a political scientist and educator, and am Professor of Government at Harvard University, where I serve as Associate Dean of the John Fitzgerald Kennedy School of Government.

3. At the start of the Second World War, I worked at The Office of Price Administration. From 1946 until 1950, I was a staff member of what was until recently known as The Bureau of the Budget. From 1950 until 1953, I was a member the White House staff under President Truman.

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and Associate Dean of the Kennedy School, serving also until 1971 as the first Director of the School's Institute of Politics.

5. While engaged in teaching I have served on numerous occasions as a government consultant or advisor. From 1959 to 1966 I was a special consultant to the Jackson Subcommittee of the United States Senate. During the transition between the Eisenhower and Kennedy Administrations, I served as a special consultant to President-elect Kennedy. From 1961 until his death I served as a consultant to President Kennedy on major problems of government structure and operation. This consultanship was renewed by President Johnson in 1964 and continued through 1966. At various times during the 1960's I also served as a consultant to the Atomic Energy Commission, the Bureau of the Budget, and the State Department.

6. As a participant in and close observer of the Executive Branch of the federal government, I have often observed the flow of information to the press by responsible officials on a confidential basis. During the formative period of President Truman's foreign policy and again during the Korean War a great deal of illuminating detail, anticipating or clarifying governmental actions, reached the press in this fashion, as for example, the minutes of the Wake Island meeting between the President and General MacArthur. The same thing can be said, to my knowledge, of various domestic affairs, including labor relations and the conduct of economic controls during the Korean War. The flow of information in these instances would have been sharply reduced had not the officials contributing the information believed that their anonymity would be protected.

7. Specifically, without assurances of anonymity to the sources interested citizens would be deprived of a vast amount of pertinent information on particular governmental deci-

sions. Members of Congress would similarly be deprived of current information, hints, and clues to Executive decisions, and subordinate Executive officials would often fail to learn what impended or was wanted at the White House. In a government of separated powers, where authority is widely dispersed among autonomous institutions, newspaper reportage is a critically important medium of "internal" communications between the White House and agencies, between Executive and Legislative officials. Virtually every agency of government participates in this internal communications system by giving information, interpretations and other guidance to the press in confidence. Some agencies participate in this way on an almost daily basis. A great many prominent officials in the Executive and Legislative branches of the government from time to time in the discharge of their official responsibilities cause information to be supplied to the press on a confidential basis. In the vast majority of cases, there is nothing improper in this practice. Everywhere it is understood that there can be no identification of sources, unless they specifically give permission. Were this convention to be breached the communication system would cease to function in its accustomed -- and contemporary -- fashion. Yet the convention serves not alone the press, but also the government and the public, and is an integral part of the American system of government.

8. The class of confidential communications commonly called "leaks" play, in my opinion, a vital role in the functioning of our democracy. A leak is, in essence, an appeal to public opinion. Leaks generally do not occur in dictatorships, where public opinion is not a force that those in power must take into account. In our country, leaks commonly occur when significant questions of public policy are being decided in secret. A leak

opens the decision to public scrutiny and evaluation, and brings into play the forces that act in the public forum--congressional and other agencies of government, political party organizations, interest groups and other segments of society that have a stake in the decision. If the confidentiality of communications to newsmen could not be assured, I am convinced that the number of leaks would be greatly diminished, and that our political institutions would be less subject than they are to public monitoring and public control.

9. As a scholar specializing in American governmental operations, it is crucial to the timeliness, accuracy, completeness and, indeed, the usefulness of my academic work that responsible officials whom I seek to interview have confidence that I can protect their identity. In this respect, my need for reasonably current information closely parallels the needs of the working press. For example, when I was preparing my book Presidential Power, published in 1960, confidential sources were indispensable to me in researching the case materials on which my conclusions were based. This was so especially in the Eisenhower Administration where I had no direct experience. But it also applies to the Truman Administration where my understanding of affairs had to be buttressed both by interviews and by personal files in the possession of former officials, files they were prepared to let me see, but not cite. For instance, my discussion in that book of Treasury Secretary Humphrey's challenge to President Eisenhower's budget was drawn from confidential interview. For another instance, my discussion of President Truman's relations with General Mac Arthur was drawn mainly from confidential files.

10. In my experience both in government and as a scholar, the reasons why officials wish to remain anonymous,

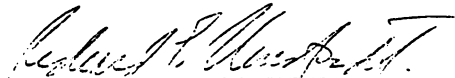
that is to keep confidential their role as a source, rests on at least three quite different sets of considerations. One is the desire to avoid giving information an "official" character. This applies especially at the highest levels where both domestic and international repercussions might be risked if sources were attributed. Second is the desire to avoid stirring up controversy among associates, whether for reasons of substance or jurisdiction. Third is the desire to retain privacy. This in my experience is likely to be more important than either of the others. In 1957, for example, President Truman permitted me to review certain of his personal papers not then part of the Truman Library collection, with the explicit understanding that I would not cite or otherwise reveal my access. His reason was that he did not wish to set a precedent; he did not wish to face a flood of scholars seeking the same access as a matter of right because he had given it to me as a matter of privilege. Present officials being still busier than former ones will feel the same concern whenever they consider giving information either to a member of the press or to a scholar. If they are denied the right to be selective they assuredly will think of saving time by reducing communications. The consequences for the functioning of government might be severe. If the foregoing concerns reduce the flow of information to the press, governmental operations will be impaired. Public knowledge will be curtailed. The ability of citizens to judge public affairs is dependent upon information. Any diminution threaten the soundness of public judgments.

11. As an educator working closely with serious student of American governmental operations, I am greatly concerned for their research prospects if the source of confidential materials with which I myself have worked were now cut off. Re-

search into contemporary and near-contemporary operations cannot help but be heavily dependent on confidential interviews and on privileged access to private papers. If sources were no longer confident that their confidence could be protected, then a great deal of source material is bound to dry up. If this happens, it will wreck a host of scholarly projects. Worse still, it will forever deny us a key aspect of wherewithal needed later for historical understanding. In the introductory chapter of Alliance Politics I wrote:

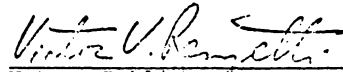
"In Washington, at least, the telephone and the copying machine combine to falsify the files as sources of historical reconstruction. The one may leave no record, while the other makes so many that few men entrust their own full thoughts to paper. In London, up to now, these inventions have had less impact, but similar results may be produced by the convention of the "Ministerial Secret" Were a student made to choose, God forbid, between the files and memories of participants, he would do well to take the latter. Pity the future historian, who may turn out worse off than those of us who have to work with relatively journalistic means."

Those "journalistic means" depend in large measure upon confidential sources. If the products of such sources are not available to set alongside the written record, then the written record along, when ultimately revealed, will not furnish an accurate view of what actually transpired, and will result in distorted history.



RICHARD E. NEUSTADT

Suscribed and sworn to
before me this 7th day
of October, 1973.



Notary Public

VICTOR V. BENNETT
Notary Public, State of New York
No. 1234567
Qualified in Westchester County
Commission Expires March 1, 1975

- 6 -

Mr. FLYNT. The committee will adjourn the hearings for the purpose of taking testimony and receiving evidence, pursuant to the provision of House Resolutions 1042 and 1054.

[Whereupon, the committee adjourned, subject to the call of the Chair.]



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